

EXHIBIT B

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ESTATE OF PIERRE LOURY,)
Deceased, by Tambrasha)
Hudson, Administrator,)

Plaintiff,) No. 16 C 04452

vs)

CITY OF CHICAGO, Chicago)
Police Officers SEAN HITZ)
(Star No. 6272) and JEFF J.)
RIORDAN (Star No. 7716),)

Defendants.)

The discovery deposition of ROGER
CLARK, taken in the above-entitled cause before
Steven J. Brickey, CSR, State of Illinois, at 30
North LaSalle Street, Chicago, Illinois, on the
27th day of December, A.D., 2017, commencing at
10:10 o'clock a.m.

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CITY OF CHICAGO
BY: MR. SHAWN BARNETT
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Appeared on behalf of the Defendants,

Officer Sean Hitz and Officer Jeff

Riordan;

THE VIDEOGRAPHER: MS. BARBARA RUDOLPH

REPORTED BY:

Steven J. Brickey, CSR

CSR License No. 084-004675

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APPEARANCES:

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Appeared on behalf of the Plaintiff,

CITY OF CHICAGO

BY: MR. JONATHAN CLARK GREEN

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MR. RAOUL MOWATT

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Appeared on behalf of the Defendant,

City of Chicago;

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THE WITNESS: ROGER CLARK

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1 THE VIDEOGRAPHER: Good morning. We
2 are now on the video record at 10:12 a.m. on
3 December 27th, 2017. Please note that the mics
4 are sensitive and may pick up whispering, private
5 conversation and cellular interference. Please
6 turn off all cellphones or place them away from
7 microphones as they can interview with the
8 deposition audio. Audio and video recording will
9 continue to take place unless all parties agree to
10 go off record.

11 This is media unit one of the
12 video recorded deposition of Roger A. Clark taken
13 by counsel for the defendant in the matter of
14 Hudson versus City of Chicago filed in the United
15 States District Court Northern District of
16 Illinois Eastern Division. Case number 16 C
17 04452.

18 This deposition is being held at
19 the City of Chicago Department of Law located at
20 30 North LaSalle Street in Chicago, Illinois. My
21 name is Barbara Rudolph in association with JR
22 Colby and Associates and I am the videographer. I
23 am not related to any party in this action nor am
24 I financially interested in the outcome.

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1 Will counsel please state their
2 appearance and affiliation for the record starting
3 with the taking counsel first.

4 MR. GREEN: Jonathan Clark Green on
5 behalf of the City of Chicago.

6 MR. MOWATT: Raoul Mowatt on behalf
7 of the City of Chicago.

8 MR. STROTH: Andrew M. Stroth on
9 behalf of the plaintiff.

10 MR. ODIM: Carlton Odum on behalf of
11 the plaintiff.

12 MR. GREEN: Also for the record we
13 have Kate McClellan.

14 MS. MCCLELLAN: Kate McClellan on
15 behalf of the City.

16 MR. GREEN: Also we may have Devlin
17 Schoop joining us during the deposition as well as
18 Shawn Barnett on behalf of the individual
19 defendants.

20 THE VIDEOGRAPHER: Thank you. The
21 reporter is Steven Brickey in association with LA
22 Reporting. Will the reporter please swear the
23 witness.
24

Page 7

1 WHEREUPON:

2 ROGER CLARK
3 called as a witness herein, having been first duly
4 sworn, depose and saith as follows:

5 DIRECT EXAMINATION
6 BY MR. GREEN:

7 Q. Okay. Let the record reflect as
8 stated this is the videotaped deposition of Roger
9 A. Clark taken pursuant to agreement of the
10 parties and notice in the Federal Rules of Civil
11 Procedure in the case of Hudson versus City of
12 Chicago, et al 16 C 4452 presently pending in the
13 United States District Court for the Northern
14 District of Illinois Eastern Division.

15 Now, Mr. Clark, are you here
16 with counsel today?

17 A. I am.

18 Q. And who is your counsel who will be
19 defending you?

20 A. Mr. Odum as I understand.

21 Q. Okay. And you understand you're
22 under oath?

23 A. I do.

24 Q. Okay. And are you presently under

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1 the influence of any medication, drugs or alcohol
2 that may affect your testimony today?

3 A. I am not.

4 Q. And how many depositions have you
5 taken approximately?

6 A. In depositions, probably 800.

7 Q. Okay. So you know the ground rules,
8 correct?

9 A. I believe I do.

10 Q. Okay. And if you have any questions
11 while I'm taking this deposition, if there is
12 anything you don't understand, of course feel free
13 to stop me at any time and ask for clarification,
14 do you understand that?

15 A. Yes.

16 Q. Okay. And if you don't indicate
17 that you don't understand the question, it will be
18 assumed that you understood the question, do you
19 understand that?

20 A. Yes.

21 Q. Okay. Also, if you need to take a
22 break, of course please indicate so you'd be
23 allowed to take such a break unless a question is
24 pending, at which time you can take a break as

2 (Pages 5 to 8)

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1 soon as the question is answered, you understand
2 that, correct?

3 A. Yes, and probably every hour if it's
4 okay with you.

5 Q. I understand. Your counsel informed
6 me that you may want to take a break, we as well.
7 So we'll work that out as we go along here.

8 Now, you've been engaged by
9 plaintiff's counsel to give opinions in this
10 matter, correct?

11 A. Yes.

12 Q. Okay. And let's go first to just
13 get the exhibits out of the way. If we could mark
14 here Exhibit 1 the notice of videotaped
15 deposition.

16 MR. GREEN: Do you have Exhibit --
17 (Document marked as Clark
18 Exhibit No. 1 for
19 identification.)

20 BY MR. GREEN:

21 Q. You have Exhibit 1 before you, have
22 you seen this before?

23 A. Yes.

24 Q. Now, on the backside or the second

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1 with Mr. Odum.

2 Q. And where --

3 A. And that was after I landed and went
4 to the location.

5 Q. And so that was the site of the
6 underlying incident in this case?

7 A. Yes.

8 Q. And how long did you spend there
9 approximately?

10 A. Probably around -- well, we drove
11 the area starting from where the incident started
12 and then wound up in the alley and got out and I
13 went to the yard, et cetera, and that was probably
14 20 minutes, 30 minutes. It was cold.

15 Q. And what time of day was it? Was it
16 light out, dark out?

17 A. It was -- it was right around
18 3:00 -- 3:00 to 3:30 p.m.

19 Q. So it was still light out a bit?

20 A. Yes, it was.

21 Q. And did you speak with anybody at
22 the location?

23 A. No.

24 Q. Was anybody other than your counsel

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1 page of the exhibit, it states that all materials
2 to bring with you or make available to defendants'
3 counsel in advance, all materials upon which you
4 relied or relies to formulate and support all
5 opinions contained in this report, all materials
6 reviewed or consulted in this matter, but not
7 relied upon by drafting -- before drafting his
8 expert report including treatises, all notes,
9 notations, comments or other recordkeeping created
10 while reviewing materials to formulate his opinion
11 and/or to memorialize facts or thoughts, copies of
12 all statements, bills, paid or unpaid, copies of
13 all recordkeeping or for billable hours, a list of
14 all matters in which you gave deposition or trial
15 testimony providing the case name, number, court
16 and party for whom the testimony was given, have
17 you provided all those to defendants' counsel?

18 A. Yes.

19 Q. All right. Have you brought
20 anything in addition other than what was sent to
21 you by -- from your counsel to us directly, have
22 you brought anything with you today?

23 A. I brought nothing further except to
24 let you know that yesterday I did a site visit

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1 and you there with you?

2 A. There was a white Lexus with the
3 engine running and somebody in it parked right at
4 the location. We did not approach or talk to that
5 individual, but there was someone there.
6 Otherwise, I saw no one else.

7 Q. So you don't know if that was an
8 Uber or somebody just from the neighborhood?

9 A. Correct, I do not know.

10 Q. Okay. If we can mark Exhibit 2 for
11 the record, which is essentially your CV, that was
12 attached as Exhibit A to your report in this
13 matter.

14 (Document marked as Clark
15 Exhibit No. 2 for
16 identification.)

17 BY MR. GREEN:

18 Q. Can you take a look at this, please.
19 Is this what you recognize as your six-page CV
20 that was attached as Exhibit A to your report of
21 November 13th, 2017, in this matter?

22 A. Yes.

23 Q. Have there been any changes since
24 you submitted this?

3 (Pages 9 to 12)

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1 A. I just noted as I looked that it
2 said that I -- on the first paragraph, I have
3 consulted in approximately 1,500 cases. That
4 should read 1,700. Other than that -- and I went
5 ahead and wrote that in by -- 1,700.

6 Q. By hand on the exhibit?

7 A. By hand. So I hope that's okay and
8 that would be a correction.

9 Q. Okay. And between the 1,500 and
10 1,700, when did that occur?

11 A. Well, I -- I -- apparently, I drew
12 this -- the 1,700 would be a couple of years ago.
13 So it would be a year-and-a-half ago, 18 months
14 ago that this was produced.

15 Q. So you've consulted in 200 more
16 cases within the last two years?

17 A. I believe so, yes.

18 Q. Okay.

19 A. I've not kept track, but it's
20 something like that. A hundred cases a year.

21 Q. All right. We'll return to that in
22 a minute. Let's just do Exhibit 3 here. This is
23 the prior testimony for the last four years
24 attached as Exhibit B to the report of November

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1 Q. Citations, too, just as if it was
2 added to this list, that way we're full up-to-date
3 and whether it's trial or deposition.

4 A. All right. October -- okay. So
5 here is what I'll do. I will say what it is,
6 trial or deposition, and then the date and the
7 citation.

8 Q. Perfect.

9 A. I did something wrong here. It's a
10 busy month. Okay. Deposition, October 12th,
11 Evangelica -- Evangelina, E-V-A-N-G-E-L-I-N-A,
12 Gonzalez versus the County of Los Angeles, case
13 I'll have to -- one second. I think I listed a
14 number. It's a federal case. 2:16-cv-07018.
15 Next, deposition, October 13th and December 15th.
16 There were two days. Felipe Navarro, F-E-L-I-P-E,
17 versus the State of New Mexico, 20 -- excuse me.
18 26:16-cv-01180 MCA. Next, trial, October 17th,
19 Mayumi, M-A-Y-U-M-I, Donaldson, D-O-N-A-L-D-S-O-N,
20 versus the City of Englewood, superior court in
21 the County of Los Angeles, case number BC 563203.
22 Next, trial, October 25th, Randy Conan, C-O-N-A-N,
23 versus the City of Fontana, federal case number
24 15:16-cv-01261. Next.

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1 13th, 2017, in this matter. If you take a look at
2 this just to verify.

3 (Document marked as Clark
4 Exhibit No. 3 for
5 identification.)

6 BY MR. GREEN:

7 Q. Okay. Mr. Clark, if you can take a
8 look at that. Is that a fair and accurate copy of
9 your prior testimony for the last four years as
10 submitted on Exhibit B to your report of November
11 13th, 2017, in this matter?

12 A. Yes.

13 Q. Have there been any changes since
14 then?

15 A. There have been additions since
16 October 9th.

17 Q. And which additions are those?

18 A. I have to refer to -- this is a
19 precise list. So starting from October 9th I'll
20 give you the additional cases -- do you want the
21 additional cases?

22 Q. Sure. Yes, please.

23 A. You want me to, um, just give you
24 the dates or do you want the citations as well?

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1 BY MR. GREEN:

2 Q. I'm sorry. City of Fontaine?

3 A. Fontana, F-O-N-T-A-N-A.

4 Q. Okay.

5 A. Okay. Next is a trial, October
6 27th, Estate of Manuel Diaz versus City of
7 Anaheim, case number 12 -- it's a US case 12-01897
8 JVS.

9 Q. Emanuel. What was his last name?

10 A. Diaz, D-I-A-Z. Next --

11 Q. What court was that again?

12 A. It's a federal case. Central
13 District.

14 Q. Of California?

15 A. California.

16 Q. Okay.

17 A. Next, a trial, November 7th, William
18 Mears, M-E-A-R-S, versus the City of Los Angeles,
19 cv 15-08441 JAK. Next, a trial, November 15th.
20 I'm going to murder this name Shellabarger,
21 S-H-E-L-L-A-B-A-R-G-E-R versus Dicharry,
22 D-I-C-H-A-R-R-Y, case number 13-cv-00188 TLN.

23 Q. And where was that located?

24 A. Just one second here. That was in

4 (Pages 13 to 16)

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1 San Francisco Eastern District US case -- US
 2 Eastern District of California. It was an
 3 interesting case. Next is a deposition of
 4 November 21st, Heleine, H-E-L-E-I-N-E, I'm going
 5 to spell this for you T-C-H-A-Y-O-U versus the
 6 City of Los Angeles. It's a federal case
 7 16-cv-06073 TJH. Next, a deposition on November
 8 27th, Monica Ortiz, O-R-T-I-Z, versus the City of
 9 Rialto, R-I-A-L-T-O, and that is a federal case
 10 5:16-cv-01384 JGB.

11 Q. V or B?

12 A. B as in boy. Okay.

13 Q. And where was that located, the City
 14 of Rialto?

15 A. Rialto. That's in California.

16 Q. Central District?

17 A. Right, that would be Central
 18 District Los Angeles County area. So December 1st
 19 CR and you put in parenthesis Rucks, R-U-C-K-S,
 20 it's a child deceased, versus the City of Antioch,
 21 A-N-T-I-O-C-H, and that's an Eastern District.
 22 It's C 16-03742 JST.

23 Q. I'm sorry. Could you say that one
 24 more time?

Page 18

1 A. Sure. C 16-03742 JST. Next is a
 2 trial on December 8th.

3 Q. I'm sorry. That December 1st one
 4 Rucks, was that a trial or a deposition?

5 A. It's a deposition. I'm sorry.

6 Q. And the next one is a trial?

7 A. Next is a trial. December 8th.

8 Sammy Sanchez, S-A-N-C-H-E-Z, versus the City of
 9 Tucson, New Mexico.

10 MR. MOWATT: Might I make a
 11 suggestion. Mr. Clark, you're reading this off of
 12 a Word file or some such?

13 THE WITNESS: I am.

14 MR. MOWATT: Could you possibly
 15 e-mail that and I could print copies as a revised
 16 exhibit?

17 BY MR. GREEN:

18 Q. Well, please do. How many more do
 19 you have?

20 A. Not many more, but I was going to
 21 suggest that and I'm happy to --

22 Q. I'd like to hear it first for the
 23 deposition.

24 A. Sure.

Page 19

1 Q. If you can then forward it to us for
 2 our records, that would be great.

3 A. Okay.

4 Q. But if you can finish up.

5 A. I keep it updated and it's precise.
 6 So what you'll get is a complete -- the latest
 7 edition it won't have this one on it, but it will
 8 be up to this date.

9 Q. Okay.

10 A. Is that satisfactory?

11 Q. Sounds good. We have trial --

12 A. So where we are -- December what?

13 Q. On December 8th. Sammy Sanchez
 14 versus City of Tucson?

15 A. That's a US case 72-1576857. Next
 16 is a deposition of which the City is involved.
 17 That was December 11th. The Estate of Roshad
 18 McIntosh, M-C-I-N-T-O-S-H, versus City of Chicago.
 19 That is case number 1:15-cv-01920.

20 Q. And that's otherwise known as Lane,
 21 the Estate of Lane, or the Estate of McIntosh,
 22 Lane is the plaintiff, correct?

23 A. Correct. Then two more to go. Next
 24 is a deposition on December 14th, which is Taylor

Page 20

1 Swift, S-W-I-F-T, versus David Woo, W-O-O, it's a
 2 case in San Francisco, it's a US case
 3 3:17-cv-00866. And last is a deposition on
 4 December 18th. Domingo Davis, Junior versus the
 5 City of Santa Clara and that case -- and that's in
 6 the Eastern District. It's near San Francisco.
 7 5:15-cv-05603 EJD. That's it. And then it will
 8 be today.

9 Q. So since you've provided us with
 10 this, you've had 14 depositions or trial
 11 testimony, correct?

12 A. You are correct. That's a precise
 13 list.

14 Q. And of these 14, were any of them
 15 Monell cases or have Monell claims that you were
 16 testifying in regard to?

17 A. There were a number that had Monell
 18 opinions. In the trials -- in the ones where
 19 there were trials, I did not express a Monell
 20 opinion.

21 Q. And --

22 A. Almost in every one of the reports,
 23 there was a Monell commentary.

24 Q. In each of these?

5 (Pages 17 to 20)

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1 A. About two-thirds of them had a
 2 Monell commentary.
 3 Q. All right. So along with the
 4 additions of these 14 other cases and the list you
 5 provided, this is now a fair and accurate copy of
 6 your prior testimony of the last four years coming
 7 into this deposition?
 8 A. It would be fair, accurate and
 9 precise.
 10 Q. All right. Finally, let's do
 11 Exhibit 4.
 12 (Document marked as Clark
 13 Exhibit No. 4 for
 14 identification.)
 15 BY MR. GREEN:
 16 Q. Okay. Mr. Clark, can you take a
 17 look at what's been marked as Exhibit 4 to this
 18 deposition.
 19 Do you recognize it as your
 20 disclosure in this case of November 13th, 2017,
 21 without the two attached exhibits which we've
 22 marked separately?
 23 A. Yes.
 24 Q. And is it a fair and accurate copy

Page 22

1 of that disclosure?
 2 A. It is fair, accurate and precise.
 3 Q. Okay. In looking at this report on
 4 page two to eight, you mark "Materials reviewed
 5 thus far for this matter" and there are 42 items
 6 listed.
 7 Have you reviewed anything since
 8 then and, if so, what?
 9 A. It would only be the site visit.
 10 Q. The site visit that you just talked
 11 about?
 12 A. Yes.
 13 Q. And was that the one on Grenshaw
 14 where the actual shooting took place?
 15 A. Yes.
 16 Q. Now, in this list of items on number
 17 nine, it says "CPD written policies," which
 18 exactly policies -- which policies did you review
 19 in preparation of this report from the Chicago
 20 Police Department?
 21 A. The -- the policy references the
 22 requirement to be truthful and accurate in
 23 reports.
 24 Q. Are --

Page 23

1 A. And not to make false statements.
 2 Q. Now, your attorney e-mailed us last
 3 night that in clarification for this line nine
 4 that you had cited Rule 14, which in the Chicago
 5 Police Department is the one regarding making a
 6 false report, written or oral, is that correct?
 7 A. Correct.
 8 Q. Other than that, you have not seen
 9 any other City policies?
 10 A. Not in relation to this -- this
 11 issue.
 12 Q. In this report?
 13 A. Yes.
 14 Q. So the only rule that you looked at
 15 or are familiar with in the Chicago Police
 16 Department is Rule 14 about making a false report,
 17 written or oral?
 18 MR. ODIM: Objection. Foundation.
 19 BY THE WITNESS:
 20 A. For the purposes of this report,
 21 that was the policy referenced. As you are aware
 22 of, I've had a number of Chicago cases and I've
 23 reviewed their policies in other cases, but the
 24 policy for this case is that citation Rule 14 --

Page 24

1 BY MR. GREEN:
 2 Q. So --
 3 A. -- or policy 14.
 4 Q. So you did not review Rule 21 or
 5 Rule 22 or anything regarding spars or any other
 6 policies/procedures of the Chicago Police
 7 Department in coming to your conclusions in this
 8 report?
 9 A. That's correct.
 10 Q. Now, also, we received a note from
 11 your -- I'm sorry. From your -- from your counsel
 12 last night that in regard to your reference to the
 13 comments by Gene Williams in the Police
 14 Accountability Task Force report that it is the
 15 quote that Mr. Williams makes or -- at page 70, is
 16 that correct?
 17 A. That's right.
 18 Q. There are no other quotes or
 19 references in regard to that citation?
 20 A. Correct.
 21 Q. Okay. Also on number 27 you listed
 22 Daley's July 19th, 2017, statement to the City
 23 Council. Your attorney contacted us last night
 24 and said that should not have been on the list.

6 (Pages 21 to 24)

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1 that it was, in fact, not provided to you,
2 correct?

3 A. Right. I'm glad he's conveyed that
4 to you. That was a mistake. So that item should
5 be stricken completely.

6 Q. And it was not considered at all in
7 your conclusions here --

8 A. That's right.

9 Q. -- opinions? Finally, your --
10 number 28. It states "Publicly released police
11 complaint registered information on the Internet
12 at the Citizens Police Data Project website
13 www.cpdb.com." We received an e-mail from your
14 counsel last night that said, in fact, that you
15 had conducted no specific search in that database,
16 is that correct?

17 A. Correct.

18 Q. Do you know how that database is
19 compiled at all?

20 A. It is -- it's a civilian project and
21 it has key statistics and what I remember in my
22 reviewing of that database, and very quickly, for
23 example, like 56,000 allegations versus how many
24 are sustained. There is a pie chart indicating

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1 that. I could bring it up and show it to you.
2 But -- but the purpose of the notation is -- for
3 the report was that the City has had put on --
4 numerous notices of the problem.

5 Q. Do you know how accurate that actual
6 database is?

7 A. No.

8 Q. Do you know who actually put that
9 together?

10 A. It's a civilian project and I can't
11 remember the individual's name, but he -- it's
12 a --

13 Q. So you have no idea?

14 A. It goes back like 15 years of
15 research, but I don't remember.

16 Q. But you have no personal knowledge
17 of how accurate or who even put that together,
18 correct?

19 A. Correct, I did not collaborate. I
20 haven't even contacted him. There is one other
21 correction on the list if you're finished. I
22 don't know.

23 Q. Okay. Well, just going back to Rule
24 14 just to clarify that.

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1 So the opinions that you are
2 expressing in this case are based solely on your
3 review of Rule 14 in regard to the police policies
4 and procedures?

5 MR. STROTH: Objection again
6 foundation.

7 BY THE WITNESS:

8 A. That's correct regarding opinions
9 that I have expressed.

10 BY MR. GREEN:

11 Q. All right. You said there was one
12 other correction on this list, which one is that?

13 A. Right. It's on the list as number
14 35. It's plural. It's a singular deposition and
15 it's Ms. Hudson's deposition. She's the
16 plaintiff. That's sort of technical, but -- so
17 the list then would be 41 items, not 42.

18 Q. All right. You list the jury
19 verdict in Obrycka versus Chicago, are you
20 familiar with that verdict at all?

21 A. Only that it was the -- as I
22 remember, it was the -- putting the City on notice
23 of the Monell.

24 Q. Do you know which Monell claim, if

Page 28

1 any, were decided in that case?

2 A. I think there was -- they were given
3 a choice of two views and they -- I don't think it
4 was -- my understanding was it was not clear which
5 of the two views.

6 Q. So you recognize that it was
7 determined it was an ambiguous verdict?

8 A. It's an interesting way to put it,
9 but in that way there is an ambiguity. I'm not
10 the lawyer here, but just the important thing was
11 it was a notice of the Monell problems. That's my
12 term for the City.

13 Q. So you mean that in a generic
14 sense --

15 A. I do.

16 Q. -- as for not a specific type of
17 Monell issue?

18 A. Right, and I wouldn't even know if I
19 would be -- if you can even say there is a
20 difference in types of Monell. It's a custom and
21 practice issue. That's the way I looked at it.
22 It's the City's custom and practice.

23 Q. So it doesn't matter what type of
24 Monell, it's all the same, is that what you're

7 (Pages 25 to 28)

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1 saying?

2 A. I don't understand what you're
3 asking me. So if you can be more precise, maybe I
4 can answer it. I -- I don't know what you mean.
5 I think there is a global approach to problems in
6 a department and it's called Monell, whether it's
7 a -- I'll wait for the next question.

8 Q. So when you divide up your opinions
9 into five subject matters, it doesn't really
10 matter? They're all the same, is that what you're
11 saying?

12 MR. STROTH: Objection. Form.

13 BY THE WITNESS:

14 A. Same as what?

15 BY MR. GREEN:

16 Q. Meaning they don't mean a difference
17 in regard to notice or whether they're
18 deliberately indifferent or anything in regard to
19 a particular area of policy and practice?

20 A. I think you asked me like three
21 things. One is there is notice and that's --
22 that's the references of all these different
23 reports, but, in particular, the Department of
24 Justice report which is a global --

Page 31

1 have to bring it up.

2 Q. So you have no independent knowledge
3 right now of what that report is?

4 A. Correct, I don't. I'd have to look
5 at it to refresh my memory. There were -- I'll
6 wait for a question.

7 Q. All right. On 29, you have Macareg,
8 Sarah and Flowers, Alison, Amid Shootings, Chicago
9 Police Department Upholds Culture of Impunity, the
10 Truthout, what is Truthout? Is that a news blog?

11 A. Yes, as I remember.

12 Q. So you're listing this as something
13 you're relying on which is actually a news blog?

14 A. Yeah, I listed quite a bit of
15 news -- quite a few news articles all of which I
16 think have a collective weight, best way to say
17 it, regarding the opinions I expressed.

18 Q. Now, when you say --

19 A. Just let me add this. There could
20 be -- what I was trying to demonstrate in the
21 report and document is that there could be no
22 claim by the City that's reasonable that they are
23 not aware of these problems that have been ongoing
24 for a length -- a considerable number of years and

Page 30

1 Q. What I'm trying --

2 A. If I may. The second issue is which
3 is I think the overarching and most authoritative
4 commentary. The next is are -- are there written
5 issues? Yes. And are there custom and practices
6 that are not written? Yes. And they're all
7 included in the five specific areas which are
8 parsed out in 28 opinions starting at page eight
9 of my report.

10 Q. You say the written policies and
11 procedures of the City of Chicago are reasonably
12 sufficient just for written policies?

13 A. No, I don't think so and I think
14 that's exactly what the Department of Justice says
15 in a number of -- number of areas.

16 Q. Going to this list you have a report
17 number 26 Crime, Corruption and Coverups in the
18 Chicago Police Department Anticorruption Report
19 No. 7 January 17th, 2013, what type of report is
20 that and where is it from?

21 A. I can't remember exactly. I'd have
22 to go to the report. It's one of the -- just a
23 minute. It references in a footnote. It's listed
24 in the footnote of page eight. And I have to -- I

Page 32

1 that's why these -- that's why they were cited.

2 Q. So the news articles which would I
3 believe, and correct me if I'm wrong, 29, 30, 31,
4 32, 33 and 34 are basically you're saying that
5 they go to notice to the City that something --
6 well, in regard to notice for Monell purposes?

7 A. Yes.

8 Q. Other than that, there is no --
9 that's the only reason you're citing them?

10 A. I'm taking your question as whether
11 or not they're totally truthful or accurate. I
12 did not assess them in that regard. Only that
13 they -- the weight of these articles which are --
14 in my opinion, are substantial would take -- would
15 serve as notice to the City and the City response
16 should be in accordance with that kind of notice
17 and has not occurred.

18 Q. So as I mentioned the 29 through 34,
19 you have no idea how accurate the reporting may
20 have been or how --

21 MR. STROTH: Objection. You're
22 mischaracterizing the expert's answers.

23 BY MR. GREEN:

24 Q. Is it fair to say that you don't

8 (Pages 29 to 32)

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1 know how accurate the reports are that you cite in
2 29 through 34?

3 A. That's not exactly correct. I
4 having been around a while and this looked to me
5 to be good journalism, substantial, I'll use that
6 term, serious, another really good term and
7 collaborative to the -- what I consider to be the
8 crown jewel of all the studies of the City, the
9 DOJ report.

10 Q. Have you had a journalism
11 background?

12 MR. STROTH: Objection. Foundation.

13 MR. GREEN: I'm just asking.

14 BY THE WITNESS:

15 A. Not as a journalist, but as a police
16 administrator and then that was one of the issues
17 covered in the Command College course I took.

18 BY MR. GREEN:

19 Q. And did you talk to any of these
20 groups from 29 through 34 in how they came about
21 and produced their reports that are listed?

22 A. No.

23 Q. Okay. You state after you list in
24 this report the things that you reviewed. You

Page 35

1 Q. Now, how much time is required for
2 the alternative mechanisms?

3 A. That's totally dependent on what we
4 call the totality of the circumstance. There
5 are -- there is training throughout the country
6 regarding putting yourself deliberately in
7 jeopardy and refusing to take a reasonably -- an
8 obvious reasonable alternative to spare a life --

9 Q. Now --

10 A. -- to use it as a pretext. So those
11 are -- and there is a lot of training including
12 simulation training given throughout the country
13 regarding those issues.

14 Q. Would you agree if Pierre Loury in
15 this case pointed a gun at Officer Hitz, he would
16 be justified in shooting?

17 MR. STROTH: Objection. Foundation.

18 BY THE WITNESS:

19 A. Without knowing any other facts,
20 strictly on that basis, if Officer Hitz is looking
21 down the barrel of a gun in the hands of -- of
22 Loury with the expectation that his life is in
23 danger, then, of course, he could defend himself.

24 BY MR. GREEN:

Page 34

1 have a section entitled The Basic Rules Regarding
2 the Use of Deadly Force.

3 Would you agree that the
4 right -- that an officer has the right to use
5 deadly force, including the use of a firearm, if
6 an officer is in fear of death or great bodily
7 harm to himself or others?

8 A. Well, as part of the calculus, there
9 is more.

10 Q. So --

11 A. So I would not agree with that as
12 a -- as a justification in its entirety.

13 Q. So if he is in fear of great bodily
14 harm to himself or others or death, that he should
15 not use a firearm, is that what you're saying?

16 A. Well, there are occasions even with
17 that that you would not. The calculus is always
18 with sanctity of life in mind. Only in the direst
19 of circumstances and only absent obvious
20 reasonable alternatives, then if you are in
21 great -- if you are in fear of great bodily harm
22 or death and it's objectively reasonable, you are
23 entitled to use lethal force or you would use
24 lethal force.

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1 Q. And then your opinions would change
2 in regard to the underlying case here if that was
3 true?

4 MR. STROTH: Same objection.

5 BY THE WITNESS:

6 A. My opinions are regarding the
7 Monell. Are we talking now about Hitz's practice
8 or --

9 BY MR. GREEN:

10 Q. I'm saying if Hitz was justified in
11 shooting in this matter, would your opinions not
12 change in regard to this underlying case in regard
13 to any constitutional violation that your Monell
14 would be based on?

15 MR. STROTH: Objection. Same
16 objection. Foundation.

17 BY THE WITNESS:

18 A. I think I was -- the best way to
19 answer it is I was not -- I did not address the
20 issue of whether Loury had the gun or not or
21 whether he was pointing the gun or not. That's
22 not in any of the five specific opinions and the
23 20 -- I mean, five categories of opinions and the
24 28 specific opinions. So -- but I'm happy to

9 (Pages 33 to 36)

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1 answer that kind of question if you can repeat it.
 2 I just want to make that aspect clear. My report
 3 doesn't talk about that.
 4 BY MR. GREEN:
 5 Q. Would you agree that any Monell
 6 claim would -- would be based upon -- or the
 7 validity of any such Monell claim would be based
 8 on the validity of whether there was an underlying
 9 constitutional violation in this case or not?
 10 A. No. As I understand your question,
 11 the answer is no. It's not -- that issue is not
 12 specific to my report.
 13 Q. Now, you mentioned 28 opinions in
 14 this case. I just want to see the structure of
 15 your opinions here. I actually count 29.
 16 A. You do?
 17 Q. I wanted to have you look at 28 --
 18 or I'm sorry -- 23. It appears you have two 23's.
 19 One under failure to train and one under code of
 20 silence.
 21 A. My bad. So there are 29.
 22 Q. So I will call them for the purposes
 23 of this deposition 23A is the failure to train
 24 one, the first one, and 23B would be the code of

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1 silence one, is that fair enough?
 2 A. Yes. Thank you. I don't know how
 3 that happened, but it happens.
 4 Q. And now these five topic areas as
 5 you mentioned are -- as you have in your report is
 6 one policy of impending investigations -- of
 7 impending investigations of misconduct, that's your
 8 opinions one through six, correct?
 9 A. Yes.
 10 Q. The next one is failure to
 11 investigate, your opinion seven through 11?
 12 A. Correct.
 13 Q. And your third area is failure to
 14 discipline, your opinions 12 through 17.
 15 MR. STROTH: You mean 19?
 16 MR. GREEN: I'm sorry. Nineteen.
 17 You're correct.
 18 BY MR. GREEN:
 19 Q. And your fourth is failure to train,
 20 opinions 20 through now 23A?
 21 A. Failure to train goes from 20 to
 22 23A.
 23 Q. Okay. And your code of silence
 24 opinions then would be opinions 23B through 28,

Page 39

1 correct?
 2 A. Correct.
 3 Q. And these are all the opinions that
 4 you are providing in this matter, these 29
 5 opinions?
 6 A. Yes.
 7 Q. All right. On pages five to seven,
 8 you also state "The CPD and IPRA investigation did
 9 not reconcile obvious discrepancies." Citing
 10 "One, failure to look for the second bullet; two,
 11 a 5'7" person straddling a six foot fence; three,
 12 the handcuffing of Loury; four, the IPRA's
 13 inappropriate questioning techniques and; five,
 14 the post-incident location of Hitz and Riordan.
 15 Now, these are not your
 16 opinions, Mr. Clark, are they not?
 17 A. These are not the expressed
 18 opinions. These are citations of the event and
 19 examples of problems.
 20 Q. So this is what you believe to be
 21 the facts in the record of this case, correct?
 22 A. As relating to what I said in the
 23 paragraphs, yes, I consider them to be the facts.
 24 Q. And you use these facts as further

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1 bases for your 29 opinions you cited, correct?
 2 MR. STROTH: Objection. Foundation.
 3 BY THE WITNESS:
 4 A. As typical examples of -- that would
 5 fit into the opinions, correct.
 6 BY MR. GREEN:
 7 Q. And how would these five facts
 8 concerning the post-shooting investigation change
 9 the underlying issue of whether the underlying
 10 shooting was justified or not?
 11 MR. STROTH: Objection. Foundation.
 12 BY THE WITNESS:
 13 A. Well, I think we discussed where
 14 that fit -- the underlying justification of the
 15 shooting fits into my opinions, but, having said
 16 that, they are put in the report to exemplify
 17 these failures as, for example, in particular the
 18 investigative procedures, the training procedures,
 19 the code of silence. Those things.
 20 BY MR. GREEN:
 21 Q. So they would not go to whether the
 22 underlying shooting was justified or not, per se?
 23 It was only on the procedural aspects of Monell?
 24 MR. STROTH: Objection. Same

10 (Pages 37 to 40)

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1 objection. Foundation.

2 BY THE WITNESS:

3 A. I think they can't be -- those two
4 issues can't be separated because clearly -- but I
5 took them to -- as examples of the five
6 categories -- five main categories of how they fit
7 in, but you're correct in that if the proper --
8 for example, just as an example, the proper
9 investigative procedure at the scene, i.e. let's
10 take the second -- the bullet hole in the window
11 as commented on in Scott's report, then it
12 certainly may -- would have yielded I think more
13 intensive inquiry and likely a different account
14 of the shooting.

15 BY MR. GREEN:

16 Q. Well, why can't the post-shooting
17 investigation be separated from what actually
18 happened out there?

19 MR. STROTH: Foundation. Objection.

20 BY THE WITNESS:

21 A. Well, the term is hand in glove.
22 They're part of -- they're different. There is
23 the glove in the hand, but they're not separable
24 in that regard because they fit together. I think

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1 in particular.

2 Q. I noticed you cited a large section
3 here, paragraph, about tasers, what does that have
4 to do with this case?

5 A. Well, it's boilerplate. I put it in
6 my report and it doesn't change. It is -- I
7 don't -- in other words, I don't adjust it to the
8 specifics of a case. It's all my qualifications
9 and it goes with the resume.

10 Q. Also just while we're at it here,
11 I'll go through your CV as well, but I noticed you
12 mentioned you did a thesis in your POST Command
13 College graduation, I take it. It required a
14 thesis. Did you, indeed, complete a thesis for
15 that?

16 A. I did.

17 Q. And what was the subject matter of
18 that thesis?

19 A. Community expectations for police
20 services.

21 Q. So it was on general administration
22 of police services across the board?

23 A. No, it was about the community
24 expectations for police services and it focused on

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1 that's a good metaphor. If -- I'll say quite
2 bluntly, the City investigator says to Hitz "Okay.
3 What happened?" Hitz gives his account. "I shot
4 him while I was down." "So both your bullets went
5 while he was down, correct?" "Correct." "You
6 were three feet away, right?" "Right." Something
7 like three feet. "Well, we got a bullet hole in
8 the window up there. How does that happen?" "Not
9 mine." "Okay. Nothing further. Must not have
10 been his bullet," not even looking at it, not
11 examining it, doesn't work. I'm just putting it
12 bluntly. So it is connected.

13 Q. Now, on pages 12 to 17, you have a
14 rather lengthy section up through page 17 of --
15 you state "My qualifications to review this case."

16 Now, is this still a fair and
17 accurate description of what you believe your
18 qualifications to review this case are or has
19 anything changed?

20 A. Not in regard to this case. There
21 have been a couple of -- I think there is one more
22 9th Circuit opinion that I don't think relates to
23 the Monell issue and there has been an acceptance
24 of my expertise last month as on the taser weapon

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1 changing values, attitudes and beliefs in a police
2 agency to meet the community expectations, hence
3 better serve the community.

4 Q. And I see you went to -- associate,
5 you got your associate degree for two years?

6 A. Yes.

7 Q. And then you went to this two-year
8 college, correct?

9 A. No, the associate -- the AS degree
10 is a two-year degree in police science from
11 Chaffey College. That was the end of the
12 institutional college degree and then the Command
13 College is a diploma given by the state -- the
14 California State Department of Justice. They
15 keep -- they don't -- they keep that to
16 themselves. They don't want to have any other
17 adjustments in the curriculum.

18 Q. So it's essentially not an
19 accredited university program --

20 MR. STROTH: Objection.

21 BY MR. GREEN:

22 Q. -- it's a separate form?

23 MR. STROTH: Objection. Foundation.
24

11 (Pages 41 to 44)

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1 BY MR. GREEN:
 2 Q. I'm just asking.
 3 A. Yes, you're correct. It's not a
 4 university degree.
 5 Q. And you are not a lawyer, correct?
 6 A. I am not a lawyer.
 7 Q. And you are not a judge?
 8 A. No, I'm not a judge.
 9 Q. And on page 13, you talk about your
 10 station detective work. That regarded juvenile
 11 work, right, in the 1970's, I believe?
 12 A. I was a station -- in the '70's, I
 13 was a station detective. That would be like a
 14 precinct detective. I understand Chicago also has
 15 headquarter units for detectives. But it would be
 16 like a precinct detective and back in those days I
 17 handled juveniles as well as felony cases that
 18 came on that would be assigned to the station.
 19 Q. So you were assigned to juveniles
 20 for that?
 21 A. Yes, when I had a little guy who was
 22 arrested that night, I took care of him, him or
 23 her.
 24 Q. You mentioned that you responded,

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1 investigative report on use of force in officer
 2 involved shootings as a watch commander and
 3 lieutenant, how many times did you actually do
 4 that?
 5 A. As a watch commander, there were
 6 two -- I had two on-duty shootings.
 7 Q. Two off-duty shootings?
 8 A. On-duty.
 9 Q. On-duty. And could you -- that was
 10 when you were as a sergeant and lieutenant? I'm
 11 sorry. As a watch commander and as a lieutenant,
 12 what were the -- you did those two on-duty
 13 shootings you reviewed, what was that?
 14 A. Well, that references -- that
 15 paragraph references -- that statement references
 16 two times -- not -- two ways I was involved. One
 17 is a watch commander. I had one of my deputies
 18 involved in a fatal shooting and then as a
 19 lieutenant the process back in those days was
 20 there would be a shooting review and that would be
 21 an ad hoc assignment for the purpose of looking at
 22 that particular event and I was on three of those.
 23 The -- of course if there was an officer involved
 24 shooting where I was not in command, but yet on

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1 duty, I would respond to assist with those.
 2 Q. All right. I'm a little unclear
 3 here. So essentially your citation on this page
 4 13 to that work you had one person under your
 5 watch who had an on-duty shooting and the rest you
 6 said up to three were through this departmental
 7 review committee you were participating in?
 8 A. Right, and then I need to add there
 9 were three more when I was a commander in NORSAT.
 10 For the first three months, I had three shooting
 11 events and then from then on no further shooting
 12 events.
 13 Q. You didn't actually do the
 14 investigations of the shootings, you were on the
 15 review committee, correct?
 16 A. Correct.
 17 Q. So you didn't direct the
 18 investigation in any way?
 19 A. Only in the one -- I could be more
 20 precise about it. When I was a watch commander at
 21 Crescenta Valley Station, I did quite a bit of
 22 direction, but I was not the lead investigator.
 23 Q. So you gave suggestions when it was
 24 the person under your command of what should be

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1 looked into?
 2 A. The investigator was never under my
 3 command, the lead investigator that would be the
 4 homicide detective, but I was the -- probably the
 5 second on scene and I took command and secured the
 6 scene until that investigator arrived.
 7 Q. So there was a separate person doing
 8 the investigation there?
 9 A. Correct.
 10 Q. You state on page 13 you lectured at
 11 the Reserve Academy on the POST syllabus.
 12 Now, again, the POST for
 13 purposes of the deposition is the Peace Officers
 14 Standards and Training, correct?
 15 A. Correct.
 16 Q. Okay. And you said you lectured the
 17 Reserve Academy on POST syllabus, the legal and
 18 moral use of force and firearms.
 19 What else did you actually teach
 20 yourself?
 21 A. I taught -- there are 42 learning
 22 domains for POST and I think as I say in the
 23 statement I taught every one of the 42 one way or
 24 another during my career, but that refers to the

12 (Pages 45 to 48)

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1 time I worked for on a three-year project with
 2 California POST to reconfigure the curriculum for
 3 reserves. We had a thousand in our department.
 4 There are quite a few in California and the
 5 legislature had changed the requirements for their
 6 training and that incidentally is still in place,
 7 that curriculum and that method. So I'm pretty
 8 proud of the work. What they -- I also lectured
 9 at the regular academy and, in particular, at the
 10 regular academy four topics; use of force,
 11 tactics, ethics and demographics.

12 Q. And The Legal and Moral Use of Force
 13 and Firearms, what exactly was lectured in that --
 14 was it a one-time lecture?

15 A. No, every time we had a class, I
 16 would keep myself reserved for that class in
 17 particular. It was an important issue for me and
 18 for them. That syllabus now is called Use of
 19 Force. It's learning domain number 20 in our
 20 curriculum.

21 THE WITNESS: And I think we're
 22 close to an hour --

23 MR. STROTH: Take a break?

24 THE WITNESS: -- if it would be

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1 You also make reference on page 14 about you were
 2 frequently deployed at the request of
 3 investigative units such as narcotics, which
 4 provided the initial investigative leads for your
 5 operations. That was when you were at NORSAT,
 6 correct?

7 A. Yes.

8 Q. And so essentially they did the
 9 investigations already prior to forwarding them to
 10 you, correct?

11 A. No, that's not correct.

12 Q. But they had the initial
 13 investigative leads for you?

14 A. They would have an investigative
 15 lead that based on their preliminary work required
 16 some resources they didn't have or extent of
 17 investigative power they did not have and so they
 18 would -- they would handle -- they would give us a
 19 case in one of two ways.

20 One, they would temporarily
 21 attach to NORSAT and become the lead investigator.
 22 We called them the case ace, A-C-E, or they would
 23 give us the information and we would take it from
 24 there and then report back to them. So it was

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1 possible.

2 MR. MOWATT: Sure.

3 MR. GREEN: We can take -- how long
 4 of breaks do you want to take?

5 MR. STROTH: Just a few minutes.
 6 Five minutes.

7 MR. GREEN: Few minutes. Okay.

8 THE WITNESS: Just to stretch my
 9 legs.

10 MR. GREEN: In a few minutes, we'll
 11 be back.

12 THE WITNESS: Check my heart rate.

13 THE VIDEOGRAPHER: We're going off
 14 the video record at 11:16 a.m. and this is the end
 15 of media unit one.

16 (Whereupon, a break was taken
 17 after which the following
 18 proceedings were had.)

19 THE VIDEOGRAPHER: We are back on
 20 video record at 11:31 a.m. and this is the
 21 beginning of video media two.

22 BY MR. GREEN:

23 Q. Just reviewing further your section
 24 on your qualifications for reviewing this case.

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1 done those two ways.

2 Q. Did you personally handle any of
 3 those investigations?

4 A. No, I was the commander. So I would
 5 review and make sure that everything was on track
 6 and done correctly.

7 Q. Now, you mentioned here about the
 8 three months of your command. You had three
 9 justifiable shooting incidents and then over the
 10 next five years your command established as you
 11 call it a remarkable record that there was not a
 12 single shot fired by your officers or the
 13 suspects.

14 What about other officers
 15 involved in those arrests, were there any other
 16 shootings?

17 A. No. None.

18 Q. And do you know why other than what
 19 you stated here that could have been the case?

20 A. It is because of the -- our method
 21 of operation and, in particular, the cultural
 22 aspects of the units itself.

23 Q. Could it have been perhaps that
 24 during that three-year period no one was actually

13 (Pages 49 to 52)

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1 put in fear of their life or great bodily harm of
2 themselves or others?

3 MR. STROTH: Objection. Foundation.

4 MR. GREEN: I'm getting the
5 foundation.

6 BY THE WITNESS:

7 A. Let me explain it to you this way
8 because there was a comparable unit to NORSAT
9 which was an LAPD unit called SIS and I followed
10 their track record during the time I had command
11 in NORSAT. The only difference between the two
12 units was SIS was entirely LAPD personnel.
13 NORSAT was sheriff's department, five federal
14 officers, plus up to five participating
15 departments in the county police officers. Their
16 arrest rate SIS would be 300 a year. My arrest
17 rate was 500 a year. SIS would shoot and kill six
18 a year, shoot and wound a couple dozen a year.

19 BY MR. GREEN:

20 Q. Now, did SIS operate in the city?

21 A. Let -- may I finish?

22 Q. Mm-hmm.

23 A. NORSAT never fired a shot, had a 97
24 percent conviction rate at the time of arrest, not

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1 differently. That's the only change that was
2 made.

3 Q. Now, on page 15, you list a number
4 of lectures or visiting comments you made in
5 various locations. Were any of these peer
6 reviewed presentations?

7 A. Well, the -- they were attended by
8 different agencies and so forth.

9 Q. But they were not reviewed by
10 anybody?

11 A. No.

12 Q. And you mentioned your work with
13 several projects in the Paso Del Norte Civil
14 Rights and Texas Civil Rights, that one involved
15 immigration issues?

16 A. Yes.

17 Q. And you mentioned two commendations
18 here. Something about possession of child
19 pornography. That has nothing to do with this
20 particular Monell case, does it?

21 A. No, that was an award by the
22 Attorney General of the United States.

23 Q. And that in no way affected your
24 decision-making in this case, correct?

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1 time of filing. So I would simply lay that at
2 your feet that there was absolutely no difference
3 between the type of operation or the suspect
4 apprehended or -- in fact, I think NORSAT had far
5 more dangerous clients than SIS because at least
6 85 percent of our arrests were homicide suspects.

7 Q. Geographically did you work in
8 different areas?

9 A. No, we had full range of the county.
10 In fact, the state because we were federal
11 officers. SIS was typically embedded in the city,
12 but also had full range because their
13 investigations would take them out. And, in fact,
14 on one occasion, we worked together as a combined
15 unit which was the one and only time I attempted
16 to do anything like that.

17 Q. Now, you mentioned that you were
18 involved in authoring the Field Operations
19 Directive 89-3 Tactical Operations Involving
20 Detective Personnel and you said that remained in
21 force for 20 years until 2009, why did it change?

22 A. It changed because the department
23 was reorganized and it changed because the orders
24 or the compilation of the orders was formatted

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1 A. No.

2 Q. Or your opinions?

3 A. Correct.

4 Q. Now, you make reference to that you
5 were requested by the Cleveland District Attorney
6 to present your opinions to the Cleveland Grand
7 Jury in the Tamir Rice case in Cleveland?

8 A. Yes.

9 Q. Who actually retained you in that
10 case?

11 A. The mother -- the family -- Tamir's
12 mother, in particular, with the law firm. I wrote
13 a report and the district attorney contacted me
14 and had me comment to the Grand Jury.

15 Q. So, in fact, you first were
16 initiated through the plaintiff, correct?

17 A. Correct.

18 Q. Or hired?

19 A. Yes.

20 Q. And you continued to be retained by
21 them?

22 A. I did until it concluded.

23 Q. Going back to the section entitled
24 the Department of Justice Investigation, are you

14 (Pages 53 to 56)

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1 aware of the standard of proof that they used in
 2 coming to any conclusions?
 3 MR. STROTH: Objection. Foundation.
 4 BY THE WITNESS:
 5 A. Page --
 6 BY MR. GREEN:
 7 Q. I'm getting the foundation.
 8 A. What page were you on? I think it's
 9 page eight.
 10 Q. Page eight of 17.
 11 A. I'm aware generally because I've --
 12 I've reviewed a number of these with other
 13 agencies.
 14 Q. And what is it?
 15 A. It's extremely vigorous and precise
 16 in my estimation.
 17 Q. So is it more than a preponderance
 18 of the evidence?
 19 A. That's a lawyers type term, but I
 20 would -- based on what I understand is the term,
 21 it's -- it's a very high-degree of certainty
 22 because, first and foremost, it carries the name
 23 of the Department of Justice and when you read the
 24 report you see it's well-cited, well-documented

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1 and it's supported as I stated it the footnote by
 2 a number of other companion studies that resonate
 3 with their findings.
 4 Q. Other than --
 5 A. And it -- it involved a very deep
 6 review statistically in the very -- in various
 7 cases and -- and a number of those are commented
 8 on in the report.
 9 Q. What is the actual name of the
 10 standard that they use?
 11 MR. STROTH: Objection. Foundation.
 12 BY THE WITNESS:
 13 A. I don't remember.
 14 BY MR. GREEN:
 15 Q. So you don't know?
 16 A. I did know and I do not know the
 17 term they used as I sit here today.
 18 Q. But right now other than it's
 19 entitled by the Department of Justice, you don't
 20 know what the standard is that they used?
 21 A. I do not recall I think is the best
 22 way to answer it and I do not contest it.
 23 Q. Now, you also relied on the seven
 24 conclusions you've listed here of the DOJ report,

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1 did you -- is that correct?
 2 A. There were five broad categories and
 3 they -- I listed them out in that paragraph.
 4 Q. All right. But you didn't look at
 5 any data yourself that the DOJ looked at in coming
 6 to these conclusions, did you?
 7 MR. STROTH: Objection. Form.
 8 BY THE WITNESS:
 9 A. I did not review any independent
 10 data other than what they cited and what was cited
 11 in the other reports I listed in the footnote.
 12 BY MR. GREEN:
 13 Q. So you didn't look in any specific
 14 facts cited or any specific instances that they
 15 were discussing, yourself independently?
 16 A. I did not. I was not an independent
 17 investigator of the -- of the cases cited.
 18 Q. Did you talk to anyone at the DOJ of
 19 how they came about with their conclusions?
 20 A. No.
 21 Q. Would you acknowledge that the
 22 Department of Justice, also the report, did
 23 recognize that the Chicago Police Department were
 24 making attempts at reform historically?

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1 A. I noted that.
 2 Q. Including body cameras by 2016, is
 3 that correct?
 4 A. I noted that that's already occurred
 5 last time I was here for the other deposition that
 6 was announced.
 7 Q. Is there any basis to question that
 8 the DOJ's findings that there were indeed reform
 9 attempts underway by the Chicago Police
 10 Department?
 11 A. Well, I saw that they cited -- that
 12 the City has stated their desire, but that stated
 13 desire is there and also I took it as an
 14 acknowledgement by the City of this exact thing,
 15 this Monell issue, that it did exist and does --
 16 and does exist and I took it as -- you know, I did
 17 not take the statement that it was being
 18 eliminated. I certainly based on the two cases
 19 that I've had here with the McIntosh and this that
 20 span a year and the problems are there.
 21 Q. Now, if you were to do an
 22 independent investigation into what you cite here
 23 through the Department of Justice investigation,
 24 which -- what data would you look at?

15 (Pages 57 to 60)

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<p style="text-align: right;">Page 61</p> <p>1 MR. STROTH: Objection. Foundation. 2 BY THE WITNESS: 3 A. I think I would -- first, you're 4 talking about my approach? 5 BY MR. GREEN: 6 Q. If -- 7 A. If I were going to do a statistical 8 review? I think that's been done to the -- to 9 the -- I mean, that's been looked at over and over 10 and over again, at least five times as I've cited 11 in different reports, all with the same 12 conclusion. That's why the report is written as 13 it is. It's there. The City has been on notice. 14 The problem has existed. It continues to exist. 15 It certainly continued to exist to this issue and 16 that's why the report is formatted this way. 17 Q. So it's fair to say you wholly rely 18 on these seven conclusions of the Department of 19 Justice report? 20 MR. STROTH: Objection. That 21 mischaracterizes the expert's testimony thus far. 22 BY THE WITNESS: 23 A. I do not rely wholly, but I 24 certainly can find no problem with those seven at</p>	<p style="text-align: right;">Page 63</p> <p>1 assigned to this project I would probably do it 2 much the same way as the DOJ described their 3 approach because for two reasons. 4 One is they have done this many 5 times throughout the country and it works. In 6 particular, I was very close to the LAPD 7 Department of Justice review and the Inglewood 8 Department of Justice review. So I think it's -- 9 I'll use the term bulletproof in terms of fairness 10 and completeness. So I would follow those -- 11 those protocols. Now -- and it would have to 12 be -- it would have to occur with the deficiencies 13 acknowledged in the system itself because the 14 data -- I'll wait for -- are you ready? 15 BY MR. GREEN: 16 Q. Mm-hmm. 17 A. The data is -- source is the 18 department itself. One of the problems as stated 19 in this report is if I do not want the question -- 20 if I do not want the answer, I will not ask the 21 question and if I do not want to memorialize the 22 problem, I will not keep the data and those are -- 23 that's -- those are two hurdles that have to occur 24 which I saw significantly occurred with these</p>
<p style="text-align: right;">Page 62</p> <p>1 all in any way. There is no outreach on any of 2 those seven. 3 BY MR. GREEN: 4 Q. Now, on page seven I'll ask -- I'll 5 ask it again. 6 If you were to do an independent 7 investigation and not just rely on these 8 conclusions of the Department of Justice, what 9 would you do? 10 MR. STROTH: Objection. It's a 11 hypothetical. 12 MR. SCHOOP: Yes, it is a 13 hypothetical. You're tendering this man as an 14 expert. Experts can and should be expected to 15 answer hypotheticals, counsel. Please answer the 16 question, if you can, sir. 17 MR. STROTH: Same objection. 18 Foundation. You can answer the question if you 19 can, if you understand it. 20 BY THE WITNESS: 21 A. Sure. Chicago is a big department. 22 It would require most likely and which has been 23 done as I understand it by a number of researchers 24 including a staff of the Department of Justice</p>	<p style="text-align: right;">Page 64</p> <p>1 reports. So I'll wait for the question, next 2 question. 3 Q. Well, what specifically would you do 4 to come to these conclusions in the way of 5 investigating the data that the Department of 6 Justice had? 7 A. I -- 8 Q. What protocols are there that you 9 are referring to? 10 A. Well, I would be -- first, you 11 identify who your sources are, how much of them 12 exist, if at all, what you would need. You would 13 get experts on statistics. You would have workers 14 that would develop a database. Hopefully you 15 would use computers. You would tap into what 16 exists if it exists at all what's called an EWS, 17 early warning system. 18 I would reference you to the 19 Kolts Commission and the Christopher Commission 20 study, which is extensive. Rodney King riot, my 21 last riot, I had a platoon under my command in 22 that riot and the Christopher Commission Report is 23 very good because it -- what he did was able to 24 delve into the personnel files. So it would be --</p>

16 (Pages 61 to 64)

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1 there were 7,000 personnel files by the way in the
2 LAPD.

3 They sorted through every one of
4 them and all of the complaints that existed in the
5 record and identified a certain group of officers
6 that were responsible for the majority of the
7 complaints and they statistically weighed them and
8 then he identified recommendations that this is a
9 springboard for EWS. So I think that approach was
10 good. I think that's typically what -- how the
11 DOJ report starts out, but it's very significant
12 min- -- delving into everything available that can
13 be reviewed and placed in a database.

14 Q. Have you developed your own
15 methodology for reviewing Monell claims?

16 MR. STROTH: Ob- -- that's fine.
17 BY THE WITNESS:

18 A. My own methodology? No, I don't
19 have any particular one other than I don't try to
20 re-plow the ground that's been plowed when it
21 appears valid and as you know you have a rather
22 renown professor that's been involved in this for
23 years, you have the DOJ, you've got other reports.
24 They have all come to the same conclusion. When

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1 you see that, then you have a very substantial
2 support of the conclusions and that's what I tried
3 to express in my report.

4 BY MR. GREEN:

5 Q. Now, the details you've described
6 earlier like the Christopher Report methodology,
7 what you believe the DOJ did, you personally did
8 none of that in this particular case, did you?

9 MR. STROTH: Objection. Foundation.
10 BY THE WITNESS:

11 A. I did not do that.

12 BY MR. GREEN:

13 Q. Now, on page 17, you also talk about
14 your fees?

15 A. Page 17?

16 Q. Yes, 17 at the end. You have travel
17 time at the rate of \$50 an hour; travel via
18 automobile to/from San Diego to Los Angeles eight
19 hours \$400; all case review consulting and writing
20 of expert opinions, such as Rule 26 reports, at
21 \$250 per hour; all testimony, either trial or
22 deposition, \$350 an hour with a two-hour minimum
23 required, is that a fair and accurate description
24 of your billing rates in this case?

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1 A. It's not accurate in terms of the
2 billing rate for this case. I capped the billing
3 for the case up to today at \$3,500.

4 Q. Is that a flat fee?

5 A. Well, it certainly has exceeded at
6 the rate of \$250 an hour, the \$3,500, but I capped
7 it at that pending if there is a trial and then
8 I'll charge the \$350 and, of course, the travel
9 expenses and so forth will be charged and will be
10 charged during trial time as well.

11 Q. So how many hours and how much have
12 you charged in this case so far to date?

13 A. Well, I've charged \$3,500 and
14 nothing further up to today, plus the airfare,
15 which is right at something like \$1,100 and hotel
16 has been provided, meals have been provided. So
17 just travel back to the airport. That will be it
18 until and if there is a trial, then there will be
19 travel again and \$350 for the time on the stand
20 and, of course, the deposition time here typically
21 under the Federal Rules would fall on the City,
22 but I understand they're taking care of it. So it
23 would be the \$350 for the hours here.

24 Q. Now, if there is a result in favor

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1 of plaintiff at the trial, do you expect to charge
2 for all those extra hours that you were not paid
3 for yet?

4 A. No, it's -- I would be -- regardless
5 of the outcome, my time on the stand I will charge
6 for. Other than that, no.

7 Q. So have you been paid the \$3,500?

8 A. Yes.

9 Q. And just curious, what percentage of
10 your income presently is derived from your expert
11 witness work?

12 A. It would be right at two-thirds of
13 my income and the other third is my retirement.

14 Q. That's your pension from the
15 sheriff's office?

16 A. Yes.

17 Q. And, Mr. Clark, did you actually
18 write each portion of this report that has been
19 marked Exhibit 4 or were there certain portions
20 that were prewritten that you reviewed and
21 approved?

22 A. There were some that were prewritten
23 that I approved.

24 Q. And, if so, which -- which portions

17 (Pages 65 to 68)

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1 were prewritten and by whom?
 2 A. Oh, my goodness. Well, they -- I
 3 think the best way to say this, collaborative with
 4 Mr. Odim. Nothing from Mr. Stroth.
 5 Q. Mr. Odim, you're talking about your
 6 counsel with you today?
 7 A. Yeah. Well, he's my client. He is
 8 not representing me, but he is representing the
 9 plaintiff. Plaintiff's counsel. So let me see.
 10 I vetted with him the listing of material
 11 reviewed, the overview of events. Actually, I
 12 took out of statements you see there is heavy in
 13 quotes. Mr. Odim pointed me to IPRA statements,
 14 which I plugged in. And then it was -- you see
 15 some similarities with McIntosh on opinions and
 16 then -- and then my qualifications, as I said,
 17 always appears in my reports.
 18 Q. Now, when you say similarities,
 19 they're, in fact, virtually identical to the Lane
 20 opinions, the last list of opinions in that case,
 21 is that correct?
 22 MR. ODIM: Objection.
 23 BY THE WITNESS:
 24 A. They're -- they're not exact and

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1 they're not -- but I think the paragraph, the
 2 Department of Justice investigation is I think
 3 almost word for word because it's accurate.
 4 BY MR. GREEN:
 5 Q. And they -- they were drafted by
 6 Mr. Odim for you?
 7 A. No.
 8 MR. STROTH: Objection.
 9 BY THE WITNESS:
 10 A. No, it was collaborative. And we --
 11 we worked together on it. He made suggestions and
 12 then the opinions was closely collaborative. The
 13 footnote is his that he provided to me.
 14 BY MR. GREEN:
 15 Q. Now, is this -- that's -- one last
 16 note on this -- on the bottom here.
 17 MR. STROTH: Of what page?
 18 MR. GREEN: Of page eight of 17.
 19 MR. STROTH: Mm-hmm.
 20 BY MR. GREEN:
 21 Q. This is the ultimate report about
 22 failures of the Chicago Police Department's
 23 pattern and practice, what -- what footnote --
 24 where is that referring to?

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1 A. Well, that's at -- and so when I put
 2 it into the report, I forgot the little one, but
 3 it's meant to be after -- it's a comment on the
 4 Department of Justice investigation.
 5 Q. So this is just a comment on the
 6 paragraph concerning the Department of Justice --
 7 A. Right.
 8 Q. -- investigation?
 9 A. Right, and the formatting is my
 10 fault. That's -- that's the source of the
 11 information.
 12 Q. And just for the record the Lane
 13 case or McIntosh case that we've been referring to
 14 that's 15 C 1920, the deposition you provided a
 15 couple of weeks ago on December 11th, 2017?
 16 A. Yes. Yes.
 17 Q. All right. Let's just go back to
 18 your CV itself Exhibit 2. If we can take a quick
 19 look. It states that you were a police procedures
 20 consultant self-employed since April 1st of 1993,
 21 correct?
 22 A. Correct.
 23 Q. And you made that change that you've
 24 had 1,700 cases thus far in your retirement that

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1 you've worked on, correct?
 2 A. Yes.
 3 Q. All right. And you've had no law
 4 enforcement work since 1993, isn't that correct?
 5 A. Not as a sworn officer, correct.
 6 Q. In fact, the only thing here you
 7 have listed as your work at the Juvenile
 8 Corrections Center for one year, seven months,
 9 correct?
 10 A. Right. I was appointed by the
 11 governor to be one of twelve to establish the
 12 agency.
 13 Q. Okay. Going to your history in law
 14 enforcement from 1993 and going back from there
 15 you mentioned your command of a special unit, the
 16 NORSAT unit. Where was that located? What was
 17 the jurisdiction?
 18 A. Well, it was --
 19 Q. It says northern region of Los
 20 Angeles County, is that the north suburbs?
 21 A. Well, the location that was -- the
 22 physical headquarters was the City of Duarte
 23 provided the building for us. It was an
 24 undercover location with an undercover fleet. So

18 (Pages 69 to 72)

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1 with that in mind, but we -- and we were
2 assigned -- in the sheriff's department there are
3 three regions and the unit had to be attached to
4 one of those regions and it was Region North and
5 that's the way we were assigned under -- because
6 we had to fall under an area commander and a
7 division chief. So we were in Region North.

8 Q. And that's the northern suburbs of
9 Los Angeles City, county?

10 A. Right, the northern region is, but
11 we're not restricted to that. You know, we
12 went -- there were a number of times we went quite
13 a bit out of -- out of the county itself depending
14 on the investigation.

15 Q. And the size of that unit that you
16 were in from '87 to '93, you have 25 officers, 25
17 reserves and three civilians. So at one time
18 there were 50 or less in that unit?

19 A. Yes.

20 Q. In fact, at 25 reserves, did they
21 work part-time? You mentioned that in a couple of
22 places here. How does that work?

23 A. Reserves in our department were --
24 had full-time jobs. They were not paid hourly

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1 Q. So you didn't do any sworn peace
2 officer operations individually?

3 A. Only -- only on when there was
4 callouts for the unit to deploy such as plane
5 crashes and fires and earthquakes and civil
6 disorders, et cetera.

7 Q. On a day-to-day basis, how many
8 people were actually in that unit?

9 A. There were only -- there were four
10 sergeants and staff and probably around a dozen.

11 Q. A dozen?

12 A. Yeah, plus the equipment.

13 Q. And you have 400 -- excuse me -- 450
14 law enforcement explorer scouts, can you explain
15 what those are that you had contact with?

16 A. What are we looking at here?

17 Q. On the top of page three of your CV.

18 A. You know, I was talking about as a
19 sergeant the Reserve Forces Bureau -- forgive me.
20 Item number two, Reserves Forces Bureau for the 42
21 months. That was a project, special assignment to
22 work with POST for the POST curriculum and I had
23 collateral assignments for the chaplaincy, the
24 reserves on our department, about a thousand of

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1 rate. They were highly trained, I'll use the
2 term, individuals male and female that were given
3 police powers after they received their POST
4 certification and worked with us.

5 Q. And --

6 A. And they were specific. I mean,
7 they were vetted and specific to the unit.

8 Q. So you have your 42 months before
9 that Executive Offices Reserve Forces Bureau, in
10 fact, that was an administrative position, was it
11 not?

12 A. Well, that's -- it's actually split
13 into two parts, but it belonged to the Emergency
14 Operations Bureau and that was a unit that I
15 helped -- I was assigned to establish -- in
16 California, the sheriff is the assigned director
17 of operations for emergency -- for natural
18 disasters and civil disorders. So that unit
19 tended to that. And while I was there, I
20 connected with the -- did a lot of work with the
21 Department of Justice, discovered that we could
22 tap into their excess property legally and that
23 program is still ongoing. It's about a million
24 dollars a month in property that the agency gets.

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1 them. The civilian volunteers, the posse, so
2 forth. So that's a reference. The department had
3 explorers through the Boy Scouts of America. They
4 had personnel assigned to each station, a sergeant
5 typically that took care of them. They were like
6 intern wannabe hopeful to -- once they graduated,
7 to become police officers eventually and they
8 were -- there were 450 of them and that was an
9 adventure because it's like 450 cats that you're
10 watching.

11 Q. All right. So when you were
12 referring before about being called out for
13 emergencies and things, is that at the Executive
14 Offices Reserve Forces Bureau or was --

15 A. No.

16 Q. -- that something else you're
17 referring to?

18 A. No, that -- that is going to be in
19 item -- I jumped ahead. That's going to be item
20 number five and six.

21 Q. Okay. So essentially item number
22 two, the Executive Offices Reserve Forces Bureau,
23 was an administrative position, correct?

24 A. Right, it was administrative. It

19 (Pages 73 to 76)

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1 was the POST project and got me connected to the
2 Department of Justice and I became one of the
3 department experts on POST.

4 Q. Your Field Operations Region One
5 Crescenta Valley Station, number three, for 49
6 months back in 1980 to '84 it said a police
7 facility of a hundred personnel, was that at any
8 one time there were a hundred people there?

9 A. Yeah, that was like a precinct or a
10 division in the department. That's in the
11 sheriff's department. In the sheriff's
12 department, I was a lieutenant.

13 Q. And, in fact --

14 A. Okay.

15 Q. Is that -- again, is that in that
16 northern area of LA County?

17 A. Correct.

18 Q. Have you ever worked in south LA?

19 A. Not at a station, so I did a station
20 only on certain projects.

21 Q. Or east LA?

22 A. Only on special projects.

23 Q. So your main area was the northern
24 suburbs of Los Angeles?

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1 Q. And then going back before that in
2 '76 through '78 for 27 months you worked in the
3 administrative division federal surplus, that's
4 the one you talked about earlier taking care of
5 the surplus property?

6 A. Right, that's actually a four-year
7 assignment, same desk I was sitting at and -- but
8 I was -- because of the program they divided me
9 out. So put me from patrol division into
10 administrative division. So five and six are
11 essentially the same.

12 Q. So six was also administrative in
13 nature when you were assigned as the personnel and
14 logistics sergeant?

15 A. Correct.

16 Q. And, going back, the patrol division
17 when -- you were a sworn officer at that point in
18 1973, '74?

19 A. Yes.

20 Q. And in '72, '73 at San Dimas
21 Station?

22 A. I was a patrol sergeant there.

23 Q. And how big is the San Dimas
24 Station?

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1 A. Correct.

2 Q. I see in that field operations
3 section when you were there you talked about a
4 high school undercover narcotics operation, what
5 did that involve?

6 A. That was -- the City of La
7 Canada-Flintridge had a high school and we had an
8 undercover narcotics sting operation there. We
9 put in some youthful looking officers. They
10 pretended to be high school students.

11 Q. And took care of the annual station
12 picnic, too?

13 A. Well, those are some of the things
14 that I was involved in.

15 Q. Going back further into '78 through
16 '80, you had custody division of the Central Jail.
17 That essentially was a corrections position,
18 correct?

19 A. Right, that was my first two years
20 as a lieutenant.

21 Q. And you worked on new fire safety
22 specifications for jail bedding and mattresses?

23 A. Yes, that's one of the
24 contributions.

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1 A. Well, geographically, it was the
2 largest of the stations, but there's 18 stations.
3 Population-wise it included -- it was urban and
4 rural, the Angeles National Forest, but it had
5 pieces of Pomona, San Dimas, Arcadia, West Covina,
6 Covina.

7 Q. How many officers were in San Dimas
8 Station?

9 A. There were -- it was about the size
10 of Crescenta Valley, so it was about a hundred
11 total in that station.

12 Q. And you worked 1971 to '72 as a
13 watch commander in the sheriff's department old
14 radio room, is that, again, administrative in
15 nature working in the radio room?

16 A. Right. That was a special project
17 as a sergeant, first year as a sergeant and I
18 helped with the department from analog to digital
19 in that project.

20 Q. And going back again '70 -- 1970,
21 1971 you were a station detective assigned to the
22 evening watch. I believe you referred to that
23 earlier when you had some juvenile matters come
24 in, criminal complaints, juvenile petitions. That

20 (Pages 77 to 80)

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1 was actual detective work you did at that point?
 2 A. Yeah, it was my last two years as a
 3 deputy rank.
 4 Q. And that was the last time you
 5 actually were assigned detective work, per se,
 6 correct?
 7 A. As a detective. I was a detective
 8 bureau commander and -- after that.
 9 Q. That's the last time you were
 10 whole-heartedly assigned yourself as a detective,
 11 correct?
 12 A. Right, I was a deputy.
 13 Q. Okay. And, again, we have, again,
 14 San Dimas you mentioned there was maybe a hundred
 15 officers over there and that was in '68 to '70
 16 and, again, your first work back in '65 to '66 was
 17 in the Central Jail again, correct?
 18 A. Correct.
 19 Q. Okay. You have degrees and
 20 certifications on the bottom. If you can just
 21 explain them.
 22 The POST Command College, you
 23 mentioned that was a nonaccredited program,
 24 correct?

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1 A. Well, it's accredited by the State
 2 of California, but you're right about it not being
 3 part of the university system.
 4 Q. Right, as an academic degree.
 5 A. Correct, the diploma is given by --
 6 there is a diploma and it's given by the
 7 Department of Justice. So that's in '88. I
 8 didn't bother with -- I have pages of POST
 9 certification, but I had the management
 10 certification in '80. POST in California
 11 certifies at basic, intermediate and advanced. I
 12 just cited the advanced certification when I
 13 received it in '75 and then the academic degree
 14 with Chaffey College in '71.
 15 Q. And that was a two-year associates
 16 degree?
 17 A. Correct.
 18 Q. And what was your area of study back
 19 then?
 20 A. It was police science.
 21 Q. Police science, was that like
 22 similar to criminal justice?
 23 A. That would be equivalent.
 24 Q. Could you point out in your CV your

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1 specific credentials in regard to administrative
 2 investigations of officer misconduct?
 3 A. Sure. It would be the POST Command
 4 College in particular and my work at NORSAT I had
 5 a number of police corruption cases that we worked
 6 and was called on to work, assigned to work by the
 7 administration.
 8 Q. Did you ever work in Internal
 9 Affairs?
 10 A. I'm not quite finished with the
 11 first -- do you want me to stop?
 12 Q. No, go ahead.
 13 A. And then, of course, I've had -- I
 14 think this is not unique to any officer. I had
 15 right from the very beginning of my career, in
 16 fact, the first day of my assignment I bumped into
 17 the code of silence and the cultural aspects of an
 18 investigation, in particular, the units that would
 19 become infested with -- with misconduct and the
 20 department's response or lack of response to it
 21 from my own experience. So that's the answer to
 22 the next question, sir.
 23 Q. Well, did you ever work in Internal
 24 Affairs?

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1 A. Not in the Internal Affairs Unit.
 2 Q. Well, what other ways did you work
 3 in Internal Affairs? Were you an informant for
 4 them?
 5 A. No, I was never an informer, as in
 6 undercover. I certainly wrote a number of -- of
 7 in-house memoranda that got a lot of attention
 8 regarding corruption, in particular a group called
 9 the Vikings for which incidentally the sheriff of
 10 Los Angeles County is now awaiting sentencing and
 11 the undersheriff is in prison. So I was never an
 12 informer, but would be assigned for -- because of
 13 our surveillance abilities to surveil subjects in
 14 that regard.
 15 Q. Is this with NORSAT?
 16 A. That would be NORSAT and the last
 17 piece of that answer is that at the time that I
 18 was in the department the misconduct could be
 19 handled at two levels depending on if there were
 20 certain qualifiers. At the station level, it
 21 would be referred to Internal Affairs. More often
 22 than not, the station took care of its own
 23 problems and did its own stations and I was
 24 involved in a number of those as a lieutenant, one

21 (Pages 81 to 84)

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1 of which would resulted in discharge, a theft
 2 of -- thievery thing out of our evidence locker.
 3 Q. So those were your normal duties as
 4 a commanding officer --
 5 A. Yes.
 6 Q. -- to take care of those types of
 7 matters?
 8 A. As the commanding officer, correct.
 9 Q. And the -- that was your experience
 10 with what you would call the code of silence in
 11 Los Angeles County was what you assisted using
 12 your NORSAT group --
 13 A. Yes, sir.
 14 Q. -- in an investigation in that
 15 regard?
 16 A. Yes, code of silence would be an
 17 issue. It's always an issue in misconduct.
 18 Q. How would you define code of silence
 19 or how do you define it for purposes of this
 20 report?
 21 A. Well, I think I define it the same
 22 way in the statement by Superintendent Williams.
 23 I think he did a good job, but it's the propensity
 24 and the cultural influence of officers to support

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1 misconduct is found?
 2 A. Only as a police administrator. I
 3 think what needs to be said here is the root word
 4 of discipline is disciple and now we're talking
 5 about values, attitudes and beliefs.
 6 Q. I'm talking about procedural aspects
 7 of the disciplinary process, what have you done in
 8 that regard other than the work you did at your
 9 district?
 10 A. Let me put in the record I have not
 11 completed, but I'll just take what you asked.
 12 Q. Please do.
 13 A. In addition to what I just commented
 14 on, I've had a number of cases regarding --
 15 federal cases regarding the lack of discipline,
 16 inadequate discipline, I've studied this issue
 17 after my retirement from the department
 18 continually for the next -- from 1993 on and have
 19 testified regarding it and as quoted by the 9th
 20 Circuit "Inadequate discipline is tantamount to no
 21 discipline." That's a direct quote by me from the
 22 9th Circuit.
 23 Q. Have you written any peer reviewed
 24 articles on this subject or anything else?

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1 and/or deny misconduct for another officer.
 2 Q. And that's --
 3 A. With results -- I think the
 4 definition you asked me -- and the result of
 5 poison that leaches into the organization because
 6 of it.
 7 Q. You're referring, by the way, to
 8 Mr. Williams. Is that page 70 of the Police
 9 Accountability Report?
 10 A. Right.
 11 Q. Now, what credentials are -- would
 12 you point to in your CV to support your expertise
 13 in disciplinary procedures for officer misconduct
 14 once it's found?
 15 A. From my training and experience as a
 16 sergeant and as a lieutenant, the 9th Circuit case
 17 called Blakenhorn cites me by name regarding
 18 discipline. I'll leave it at that, but I think I
 19 have considerable experience on discipline and the
 20 influence of discipline.
 21 Q. Other than your work as -- your
 22 normal duties as a commander that you just talked
 23 about, have you had any other experience in
 24 disciplinary procedures once it's found, once

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1 A. No.
 2 Q. Have you written any articles on
 3 this subject or anything else?
 4 A. No.
 5 Q. And what in your CV do you point to
 6 as your experience with statistical analyses?
 7 A. There is nothing referencing
 8 statistical analysis in my CV except the thesis
 9 required a statistical analysis and my faculty
 10 advisor Dr. Ward Jenssen, who incidentally
 11 graduated from Chicago a professor assisted me in
 12 that work. I commented on in my last deposition
 13 in McIntosh, but, other than that, it's just
 14 direct from him and as you may know I've done some
 15 statistical work regarding Chicago and other
 16 incident reports.
 17 Q. So you wouldn't consider yourself a
 18 statistical expert, would you?
 19 A. I'm not degreed in statistics. I
 20 certainly I think and can understand statistical
 21 conclusions.
 22 Q. And other than what you have
 23 testified to so far, what about any other
 24 credentials in regard to training of law

22 (Pages 85 to 88)

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1 enforcement and use of force?

2 A. Yes. In my fitness reports, I'm
3 cited specifically as renown expert on four topics
4 in an academy lecture and one of them is use of
5 force. This is a topic that I've testified
6 throughout the country on use of force and been
7 accepted by the courts.

8 Q. Yet you have written no peer
9 reviewed articles on the matter?

10 A. No, other than the case reports I
11 write. Other than that, no.

12 Q. Have you done any education or
13 training directly on point as to how to train
14 officers in the use of firearms?

15 A. Yes, and that's -- you'll notice my
16 years at the Emergency Operations Bureau. That's
17 four years. As a collateral assignment, as a
18 sergeant, I was part of patrol school faculty and
19 that was a scenario role play on how to use --
20 when it would be appropriate to use firearms. It
21 included that.

22 Q. What faculty was that again?

23 A. That would be in '74 to '78.

24 Q. Since then have you done anything?

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1 A. Training? I've done no training
2 since I retired out of the department in '93.

3 Q. And since you left that position in
4 the '70's you just mentioned?

5 A. Well, I talked about use of lethal
6 force up to '93 and lectured on and was accepted a
7 POST -- it covered the requirements by POST for
8 use of lethal force, but the hands-on training
9 last time was four years during the patrol school
10 times when I'd be assigned ended in '94.

11 Q. Do you have any --

12 A. Excuse me. '78.

13 Q. In the late '70's, right?

14 A. Right.

15 Q. Any training in law, do you have any
16 training in law?

17 A. I have no degrees. Just personal
18 study and training in the department.

19 Q. And other than what you've testified
20 to already, any training in statistics?

21 A. As I understand your question, no.
22 I did not -- I took some statistical classes as
23 part of the police science and the rest of it with
24 Dr. Jenssen. He taught me a lot in terms of how

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1 to crunch trends and analysis.

2 Q. Any training in public policy in
3 general?

4 A. Oh, my goodness. That Command
5 College for two years was intensive on policy.

6 Q. Any education or training directly
7 on point on how to discipline officers for misuse
8 of firearms?

9 A. I'm taking that as the application
10 of lethal force and I taught extensively up until
11 '93.

12 Q. But since '93 you haven't?

13 A. No, other than my testimony and
14 trials and explaining it to a jury.

15 Q. Now, going over your own career,
16 have you ever been involved in an officer involved
17 shooting as an officer?

18 A. Yes.

19 Q. And what were the circumstances of
20 that case or how many times?

21 A. One time.

22 Q. Okay. And what were the
23 circumstances of that case and when did it happen?

24 A. I was a detective. It was in

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1 December of '72 as I remember. It was a case
2 involving burglary and identified the subject
3 whose name was Lamont Wells and he was a heroin
4 addict and had -- and was a fugitive in addition
5 to a suspect in our case and had information
6 regarding where he was. As my partner and I we
7 were in an unmarked unit, I was not in uniform, I
8 was in detective civilian clothing, along with
9 him, and as we pulled up to a bar which we knew he
10 was, he happened to be walking out, spotted us and
11 took off running.

12 Now, in those days, there was no
13 such thing as handheld radios or -- the only radio
14 was in the car and the tactic at that point was if
15 you have a fleeing subject, your target subject,
16 one person would keep him in view while the other
17 used the radio in the car, the only means of
18 communication to announce direction, what was
19 going on and get the area saturated with police
20 officers. This was in the City of Pomona by the
21 way.

22 So I was shotgun, jumped out,
23 started following him, kept him at a distance and
24 waiting for the Pomona officers to come in to

23 (Pages 89 to 92)

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1 establish a perimeter. I made a couple of turns
 2 when he made a couple of turns and to my surprise
 3 I had turned and left myself in the open where he
 4 was standing waiting for me with a gun.
 5 Q. Was he pointing the gun at you?
 6 A. Yeah, I was looking down the barrel
 7 of the gun.
 8 Q. And did you have a fear for your
 9 life or the life of others at the time?
 10 A. I had a fear for my life.
 11 Q. And did you discharge your weapon?
 12 A. After some things, yes, I did.
 13 Q. What do you mean after some things?
 14 A. Well, he pulled the trigger before
 15 anything. Immediately when I came into view, he
 16 pulled the trigger. The gun misfired. It was a
 17 semiautomatic. We both realized what had happened
 18 and I had my gun out. I told him "Drop it. Drop
 19 it. Drop it." This was all heard by -- it was an
 20 apartment complex. People heard it. His reply to
 21 me was "Fuck you" and he brought the gun up to
 22 work the slide to eject the bad round at which
 23 point I shot him.
 24 Q. So, at that point, again, you had

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1 the barrel of a gun at you?
 2 A. Actually, he was working the slide
 3 to re-chamber and I couldn't get to him in time
 4 and so I shot him.
 5 Q. So he wasn't even pointing a gun at
 6 you at that point?
 7 A. Not precisely, no. We both knew
 8 exactly what was going on.
 9 Q. And you felt you were in fear of
 10 your life and the life of others or your --
 11 A. I felt I was in fear of my life.
 12 Q. And you discharged your weapon and
 13 you feel you didn't violate any policies at that
 14 point?
 15 A. I did not violate any policies.
 16 Q. And in this particular case when
 17 Officer Hitz fired his gun, if he had that,
 18 indeed, gun pointed in his direction or, in your
 19 case, knew what was going to happen, why would
 20 that be a violation of policy --
 21 MR. STROTH: Objection.
 22 BY MR. GREEN:
 23 Q. -- and not yours?
 24 MR. STROTH: Objection. Foundation.

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1 BY THE WITNESS:
 2 A. I never said it was a violation of
 3 policy on his case. The set of facts that he
 4 recounted, he and his partner, match being in fear
 5 for his life.
 6 BY MR. GREEN:
 7 Q. So, in fact, no constitutional
 8 violation would have occurred?
 9 MR. STROTH: Objection. Foundation.
 10 BY THE WITNESS:
 11 A. Are you asking me about the veracity
 12 of the statement? Because I clearly said in the
 13 second paragraph of my report I did not make
 14 credibility statements. There is considerable
 15 physical evidence that belies the presentation of
 16 the facts.
 17 BY MR. GREEN:
 18 Q. So how many times were you involved
 19 in investigating an officer involved shooting, not
 20 your own shooting, but I think you mentioned two
 21 or three, right?
 22 A. Well, I was involved in the one I
 23 mentioned at Crescenta Valley where I was a watch
 24 commander and got up there in short order.

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1 Q. That was one of your own people,
 2 right?
 3 A. Yes, one of my own deputies. I was
 4 with NORSAT physically during one of the -- two of
 5 the shootings that NORSAT had one close at hand
 6 and because I was the ranking officer I stabilized
 7 the location. The others would be as part of the
 8 review.
 9 Q. So had any of those officers you
 10 just mentioned been found to act
 11 unconstitutionally or unjustifiably?
 12 A. No.
 13 Q. So they were all found within
 14 policy?
 15 A. No. See, there is a difference
 16 between constitutionally and policy.
 17 Q. Were they found within policy?
 18 A. No.
 19 Q. And which one was that?
 20 A. Well, I consider --
 21 Q. All?
 22 A. There were two that come to mind
 23 right now. The one when I was a watch commander
 24 at Crescenta Valley I think was both within policy

24 (Pages 93 to 96)

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1 and constitutional.
 2 Q. That was the one involving your --
 3 your officer?
 4 A. Yes.
 5 Q. But the other two you don't think
 6 were in policy?
 7 A. There were two that were problematic
 8 that I would have considered out of policy.
 9 Q. And what -- what was your role in
 10 those two?
 11 A. Reviewer.
 12 Q. So after everything was done
 13 investigation-wise, you just were a member of a
 14 committee reviewing it?
 15 A. Right.
 16 Q. And you made a collective decision?
 17 A. There was a collective decision.
 18 Q. And who decided your own officer's
 19 situation when they were found within policy?
 20 A. That would be the independent
 21 reviewer of the review team and, of course, I
 22 plugged in my opinion as part of the commentary.
 23 Q. What was your opinion?
 24 A. Oh, we're talking about --

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1 shirt and after he backed out of the light and
 2 could see no further he pulled out his gun and
 3 shot him once in the chest and he expired at the
 4 scene.
 5 Q. So you believe what your officer
 6 told you?
 7 A. I did.
 8 Q. And did you do any investigation in
 9 regard to anything that occurred there?
 10 A. Yes, I -- when -- I took command
 11 because I was the ranking officer. I separated
 12 the two. The cadet told exactly the same story
 13 having no opportunity to consult with Fieg. Fieg
 14 told me the story. He had the physical defects on
 15 his uniform.
 16 Q. What -- I'm sorry. Were you there
 17 at the car when this happened?
 18 A. No, I arrived on the scene.
 19 Q. So the two were still on scene
 20 together, right?
 21 A. Correct.
 22 Q. So they could have talked before
 23 they talked to you?
 24 A. They could have talked before.

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1 Q. Your own officer.
 2 A. My own officer absolutely was in
 3 policy and constitutional. I said that already.
 4 Q. Did he have a gun pointed at him?
 5 A. No, he didn't. He was -- I can give
 6 you the details.
 7 Q. Just briefly.
 8 A. The officer's name was Fieg,
 9 F-I-E-G. He had a cadet with him. The Angeles
 10 National Forest is dark at night. It's remote.
 11 He came across an abandoned -- what appeared to be
 12 an abandoned vehicle. They investigated. There
 13 was an individual inside, tapped on the window,
 14 the person -- and he saw a large butcher knife on
 15 the dashboard. The only light was the light from
 16 the radio car and his flashlight. The minute he
 17 tapped on the door to check on the individual, the
 18 person leaped out and attacked Fieg.
 19 The cadet was on the other side
 20 of the vehicle. Stood there frozen in fear and
 21 Fieg backed up and literally had his shirt being
 22 torn off his chest. He was under the impression
 23 that he was being stabbed, which was reasonable,
 24 and he had significant scratch injuries and a torn

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1 Q. And you didn't consider that in your
 2 investigation?
 3 A. Of course I did.
 4 Q. But you just believe they told you
 5 the truth?
 6 A. No, I did more than that. It
 7 matched the physical evidence, knife, single shot,
 8 injury to Fieg, torn uniform, terrified cadet, all
 9 of the particulars as sorted out by the
 10 investigating officers once they were -- were
 11 settled. All the details matched, timing and Fieg
 12 himself and it had -- it all spoke to the truth.
 13 Q. And you provided that opinion to the
 14 review authorities?
 15 A. I provided the complete account of
 16 everything I did and the timing to the time they
 17 arrived.
 18 Q. Have you ever been sued as a deputy
 19 sheriff --
 20 A. No.
 21 Q. -- or disciplined?
 22 A. No.
 23 Q. Have you ever been involved in
 24 Internal Affairs generally other than what you've

25 (Pages 97 to 100)

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1 talked about?
 2 A. As a subject?
 3 Q. Yes.
 4 A. As a target, no.
 5 Q. Was there a policy that involved
 6 inadequate investigation of officer involved
 7 shootings at the Los Angeles Sheriff's Department
 8 while you worked there?
 9 A. I believe that there were a number
 10 of deficient examples of -- the methods and -- and
 11 techniques of a good investigation have not
 12 changed for decades and the issue is if I do
 13 not -- if you have an investigator that
 14 approaches if I do not want an answer, I will not
 15 ask the question, then that's where it falls
 16 apart. An experienced detective knows what to ask
 17 for and what to seek and leaves no stone unturned.
 18 Q. And you never went to detective
 19 school, did you?
 20 A. No.
 21 Q. Was there a policy of inadequate
 22 discipline of officers while you were at the
 23 sheriff's department?
 24 A. There are a number of times I've saw

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1 Q. You never took a class in Internal
 2 Affairs, did you?
 3 A. I never took a formal POST class
 4 devoted strictly to Internal Affairs. Only
 5 administration -- administrative procedures.
 6 Q. All right. Let's take a look at
 7 Exhibit 3.
 8 MR. STROTH: Counsel, can we take a
 9 break?
 10 MR. GREEN: I have one more exhibit
 11 to go through and then --
 12 MR. STROTH: Just five minutes.
 13 THE VIDEOGRAPHER: We're going off
 14 the video record at 12:41 p.m. and this is the end
 15 of video media two.
 16 (Whereupon, a break was taken
 17 after which the following
 18 proceedings were had.)
 19 THE VIDEOGRAPHER: We are back on
 20 video record at 1:32 p.m. and this is the
 21 beginning of media unit three.
 22 BY MR. GREEN:
 23 Q. Okay. Mr. Clark, could I turn your
 24 attention to Clark Exhibit 3, your prior testimony

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1 that and commented on it whenever I saw it.
 2 Q. But you never had a rank higher than
 3 lieutenant when you were a police officer,
 4 correct?
 5 A. Correct.
 6 Q. And is it fair to say that your work
 7 as a staff jail deputy or a jail watch commander
 8 and administrator did not factor into how you
 9 evaluated this particular case?
 10 A. Other than the general uniform
 11 practices of police administration.
 12 Q. That was within correctional
 13 facilities, correct?
 14 A. Well, the sheriff's department ran a
 15 very large jail system. I think probably the
 16 largest in the nation. But there are a lot of
 17 similarities in how to run an organization that
 18 has police authority.
 19 Q. Is it fair to say your work as a
 20 commanding officer in investigative units did not
 21 figure into this particular case either?
 22 A. Of course it does. My experience in
 23 all these areas lends its weight to my opinions I
 24 think and my experience is a big issue here.

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1 that we discussed previously.
 2 How many times have you given
 3 testimony at trial as a Monell expert?
 4 A. I think no more than a couple of
 5 dozen times.
 6 Q. About 24 or so?
 7 A. Something like that, I think.
 8 Estimate.
 9 Q. And what is your understanding of
 10 what a Monell claim is?
 11 A. Well, it's -- comes out of New York.
 12 It's a Supreme Court case. It relates to the
 13 custom and practice, either written custom and
 14 practice or an established custom and practice on
 15 an issue and the responsibility of the agency
 16 which would be a municipality, police department,
 17 et cetera, to that custom and practice whether
 18 it's constitutional or not.
 19 Q. So you had just said about -- it
 20 involves a custom and practice on a particular
 21 issue, correct?
 22 A. Yes.
 23 Q. And, therefore, in your own opinions
 24 you divided it up into I believe four categories.

26 (Pages 101 to 104)

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1 correct?
 2 A. Right.
 3 Q. So don't they require a separate
 4 analysis of these various areas in regard to
 5 custom and practice?
 6 A. I don't see why they would. I think
 7 the -- I envisioned it and I intended it to be the
 8 global issue of the Monell, the custom and
 9 practice, and the aspects or the foundation of
 10 that would be -- could be discussed I think that's
 11 the best word or maybe illustrated to make the
 12 point in -- for the purpose of the report five
 13 specific areas. As you know, the DOJ report
 14 specifies seven.
 15 Q. I'm sorry. Five areas. I
 16 previously said four. But five areas.
 17 A. There's five. And -- and then --
 18 but I sequentially kept numbering one through,
 19 well, I thought it was 28, now it's 29.
 20 Q. So --
 21 A. But the DOJ report has seven
 22 specific categories.
 23 Q. So in your own report, how are you
 24 analyzing a failure to train claim compared to a

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1 of the training versus a code of silence where
 2 there would be training, there is knowledge of the
 3 training, but they're not following it?
 4 A. Not exactly.
 5 Q. Aren't those different?
 6 A. Yeah, they are -- they're
 7 distinctions, but you're right about is there a
 8 time when there is no training, therefore, there
 9 would be no accountability because there had been
 10 no training in that specific aspect. I agree,
 11 but --
 12 Q. So there would be a different
 13 analysis depending --
 14 A. Right.
 15 Q. -- on the issue involved?
 16 A. Yes, so we talk about the -- there
 17 are some aspects in relation to the Pierre
 18 shooting as well as the general findings by the
 19 DOJ to the department as a whole.
 20 Q. Well, going back before we go
 21 through a bit of these testimonies you said
 22 earlier there was -- you had mentioned Monell
 23 commentary in some cases versus some Monell
 24 opinions you gave in testimony, what is the

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1 code of silence claim in your opinions?
 2 A. Well, it's clear in my -- in my
 3 analysis, but the training -- all these are, as I
 4 said, are -- they're related. I don't think they
 5 can totally be separated, but failure to train
 6 covered -- would cover the conditioned response.
 7 I'll give you an example. Hitz running off solo
 8 leaving his partner behind just taking off, not
 9 getting on the air, not -- you know, just --
 10 that's totally against the professional wisdom
 11 and, of course, if that hadn't occurred, there
 12 would have been no shooting, et cetera, et cetera.
 13 That's just an example.
 14 The -- how that relates to code
 15 of silence is the -- I think connected with the
 16 propensity to ignore training or the professional
 17 wisdom with -- with the confidence that there
 18 would be no accountability either from the brother
 19 officer or sister officer that is with you at the
 20 time of the occurrence or those who will come in
 21 and scrutinize the incident.
 22 Q. But within those two examples,
 23 though, would you not agree that the failure to
 24 train involves a lack of training or no knowledge

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1 difference?
 2 A. Well, the difference is there were
 3 specific cases where the at-issue was the Monell.
 4 I had -- for example, I had a Fresno case where
 5 the judge specifically ordered at the request of
 6 the plaintiff certain data for one of their
 7 experts to review, which turned out to be me.
 8 Q. Which case was that?
 9 A. It's the -- it was a case called --
 10 that case was called Enrique, the one I'm talking
 11 about.
 12 Q. Can you put --
 13 A. As an example.
 14 Q. Can you put it out and point it out
 15 here just as an example?
 16 A. I've got to do it this way. The
 17 other aspect -- in answer to your question, is --
 18 the question was about the differences when it
 19 occurred, that in my review of the facts I could
 20 see that there was a ratification by the agency or
 21 a pattern and practice that I considered connected
 22 to the incident that I reviewed and so I would
 23 render an opinion in that regard.
 24 Q. So are you saying that in cases even

27 (Pages 105 to 108)

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<p style="text-align: right;">Page 109</p> <p>1 where there was no Monell claim filed and you were</p> <p>2 giving opinions on other areas of law enforcement,</p> <p>3 you would still give opinions of Monell?</p> <p>4 A. Yes, I did that. I would give</p> <p>5 opinions.</p> <p>6 Q. Despite being asked for it or not?</p> <p>7 A. Yes.</p> <p>8 Q. And that's a regular practice of</p> <p>9 yours?</p> <p>10 A. It's typical.</p> <p>11 Q. And you're always critical of the</p> <p>12 municipality?</p> <p>13 A. When I render it, yes.</p> <p>14 Q. You said Enrique case, was that in</p> <p>15 the last four years?</p> <p>16 A. Actually, it goes back to 2011.</p> <p>17 Q. So it's not on this list?</p> <p>18 A. That case occurred in 2011. Both</p> <p>19 deposition and trial.</p> <p>20 Q. And do you remember what court that</p> <p>21 was in?</p> <p>22 A. Fresno. US District Court in</p> <p>23 Fresno, California.</p> <p>24 Q. And would you have the cite on your</p>	<p style="text-align: right;">Page 111</p> <p>1 A. I won't be able to do it right now.</p> <p>2 MR. GREEN: Can counsel forward that</p> <p>3 to us?</p> <p>4 MR. ODIM: Yes.</p> <p>5 BY MR. GREEN:</p> <p>6 Q. And have you ever been barred as an</p> <p>7 expert in any area where you were ever disclosed</p> <p>8 as an expert?</p> <p>9 A. There are typically motions in</p> <p>10 limine on certain issues and I'm instructed not to</p> <p>11 testify.</p> <p>12 Q. Right. So that's happened to you</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. And how many times and where?</p> <p>16 A. Well, it's common because the issues</p> <p>17 of -- medical issues or engineering issues where</p> <p>18 I've been instructed not to comment.</p> <p>19 Q. So, essentially, you provided expert</p> <p>20 opinions in areas that you were not recognized as</p> <p>21 an expert, is that what happened?</p> <p>22 A. Sufficient for the case, yes.</p> <p>23 Q. So how many times has that happened</p> <p>24 in the Monell context?</p>
<p style="text-align: right;">Page 110</p> <p>1 other --</p> <p>2 A. I can give you the citation, I</p> <p>3 think. 10-cv-00581 AWI.</p> <p>4 Q. Thank you. And in the last four</p> <p>5 years on this list, how many times would you give</p> <p>6 trial testimony as a Monell expert?</p> <p>7 A. I would have to carefully go over</p> <p>8 the list. I'm sure there is about four to six in</p> <p>9 here.</p> <p>10 Q. Four to six times in the last four</p> <p>11 years?</p> <p>12 A. I would think so. That would be an</p> <p>13 estimate.</p> <p>14 Q. And can you --</p> <p>15 A. I notice --</p> <p>16 Q. Can you pull those out?</p> <p>17 A. I notice this exhibit has some</p> <p>18 format issues. I'll provide a better --</p> <p>19 Q. I think everything is on there,</p> <p>20 though.</p> <p>21 A. Yeah. Okay. The question?</p> <p>22 Q. Can you provide us the list of those</p> <p>23 Monell cases on here? This is a rather extensive</p> <p>24 list if you can't do it right now.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I don't think it's ever happened --</p> <p>2 well, there -- the only way I can answer it is in</p> <p>3 my experience the motions by the defense or other</p> <p>4 motions exclude out of the case in chief Monell</p> <p>5 issues and so I'm instructed not to -- to comment.</p> <p>6 Q. Were any of those based on your</p> <p>7 methodology or you were providing an opinion that</p> <p>8 you were not qualified to give in the Monell</p> <p>9 context?</p> <p>10 A. No, not that I am aware of.</p> <p>11 Q. So not in the last four years</p> <p>12 anyway?</p> <p>13 A. Nothing I can remember, no. But</p> <p>14 often there will be agreements between parties</p> <p>15 that Monell will not be pursued in the trial.</p> <p>16 Q. And in the four to six times you</p> <p>17 stated that you had given Monell testimony in the</p> <p>18 last four years, what areas of Monell were the</p> <p>19 issues involved were there or what were the</p> <p>20 issues?</p> <p>21 A. They would involve use of force.</p> <p>22 The case itself would be use of force. I think</p> <p>23 all the cases involved shootings and the</p> <p>24 department response to those.</p>

28 (Pages 109 to 112)

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1 Q. So there were shootings, use of
2 force and did any of them involve the impending
3 investigations or impeding investigations of
4 misconduct other than this case and perhaps the
5 Lane case that we just discussed?
6 A. Well, if you -- I've commented on
7 the failure to implement or utilize the EWS
8 properly.
9 Q. EWS being?
10 A. Early warning system.
11 Q. And how about failure to
12 investigate, were any of those Monell cases
13 involving a failure to investigate?
14 A. Yes, that would include the
15 department response and the investigation thereof.
16 Q. And how about a failure to
17 discipline?
18 A. Well, I gave you the Blakenhorn.
19 That's one that pops all the time.
20 Q. Blakenhorn?
21 A. Blakenhorn versus City of Orange.
22 Q. Was that in the last four years?
23 A. No, I think it's older now, but
24 failure to discipline is commentary often.

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1 Q. And how about failure to train?
2 A. Failure to implement the training as
3 required by POST. So that would be the -- most of
4 the time that I -- I comment or write about the
5 POST requirements, the POST standards and that
6 failure to either be -- to adhere to them or to be
7 supervised to the extent that they're implemented
8 by the department.
9 Q. And are you familiar with the POST
10 requirements in Illinois?
11 A. Yes, I am.
12 Q. And would you say that the written
13 general orders and training of the Chicago Police
14 Department satisfy those requirements?
15 A. In terms of the training and
16 certification for POST basic, yes.
17 Q. And they would be reasonably
18 sufficient for those purposes?
19 A. Yes, and that certainly would keep
20 Hines from -- Hitz from running solo after Pierre.
21 Q. And how about any of your Monell
22 cases involve the code of silence other than Lane
23 and this case?
24 A. Any of my other cases?

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1 Q. Right.
2 A. A number of them have commented on
3 the code of silence.
4 Q. Now, when you say commented, this
5 was something you had mentioned that it's in a
6 case there wasn't necessarily a Monell claim
7 because you just voluntarily put that into your
8 report?
9 A. In both -- I've done that both ways.
10 One of the key cases I had early on was Darren
11 Thomas versus the County of Los Angeles and that
12 had a lot to do with the code of silence.
13 Q. Is that within the last four years?
14 A. No, that goes back to '93.
15 Q. How many times have you in your
16 history with this being an expert have you
17 represented -- have you been hired in a criminal
18 case versus a civil case?
19 A. Criminal cases are fairly rare.
20 I've had probably 15 percent of my cases involve
21 some -- criminal -- criminal case, per se?
22 Q. Right.
23 A. I've only had a handful of criminal
24 cases that I've dealt with.

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1 Q. And in the civil cases, how many
2 times have you represented plaintiff versus how
3 many times have you represented defendants or
4 meaning you gave opinions for plaintiffs or
5 retained by plaintiffs versus being retained by
6 defendants?
7 A. Only one time in Houston for the
8 plaintiff. That would be for the County -- Texas,
9 in Texas, against a police officer. Other than
10 that, all the others were defendants. One of them
11 was a police officer defendant, criminal case.
12 Q. So you've always given reports on
13 behalf of the defendant?
14 A. We're talking about criminal
15 matters.
16 Q. All right. Well, I was talking
17 about civil matters.
18 A. Oh. So for civil matters, there is
19 still very few defendant cases. I have two active
20 right now.
21 Q. Out of how many?
22 A. Out of the 1,700 cases consulted on.
23 Q. So out of 1,700, you only did two
24 for the defendant's side?

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1 A. No, I have two active. I have
 2 probably somewhere close to a dozen, maybe less,
 3 for defendants.
 4 Q. So out of 1,700 cases, you had 12
 5 that you represented defendants in in civil
 6 matters or you have rendered opinions and been
 7 retained for defendants?
 8 A. Yes, cases that I have accepted.
 9 You are correct.
 10 Q. And how many of your cases involve
 11 the Chicago Police Department?
 12 A. I can go through and tell you how
 13 many there are. I didn't bother -- I think
 14 there's around a dozen, maybe a little less than a
 15 dozen involving Chicago.
 16 Q. And how many in the last four years?
 17 A. Well, it would be listed in the
 18 report. I have three that come to mind right now.
 19 Maybe there might be a couple more.
 20 Q. All right. Can your defense counsel
 21 give us a list of those just to make sure we got
 22 them all along with --
 23 A. I can cull them up now if you want.
 24 All of them? All the --

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1 BY MR. GREEN:
 2 Q. Okay. Let's move to your opinions
 3 in Exhibit 4. Your first opinion states "Chicago
 4 has consciously and deliberately created
 5 impediments to the process made available for
 6 citizens to complain about misconduct. These
 7 impediments include requiring sworn affidavits for
 8 complaints, not investigating allegations that
 9 have happened more than five years before the
 10 misconduct at issue and not investigating
 11 allegations of misconduct for more than five years
 12 after a CR number is issued.
 13 The maintenance in place of
 14 these impediments constitutes a de facto policy,
 15 widespread practice of failing to properly
 16 investigate civilian allegations of police
 17 misconduct including the use of excessive force in
 18 the shooting of civilians."
 19 Mr. Clark, what is the factual
 20 basis for saying that the City has consciously and
 21 deliberately created such impediments?
 22 A. The factual basis comes from the DOJ
 23 report and the other reports as listed and they --
 24 and what I did in this opinion was to be more

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1 Q. In the last four years anyway and
 2 are any of them, do you know, on behalf of the
 3 plaintiff?
 4 A. I know that they're all on behalf of
 5 the plaintiff.
 6 MR. ODIM: Can we take a quick break
 7 on this?
 8 MR. GREEN: Do you want to take a
 9 break?
 10 MR. ODIM: Yeah, I want to figure
 11 out how we do this. Two minutes.
 12 THE VIDEOGRAPHER: We are going off
 13 the video record at 1:52 p.m.
 14 (Whereupon, a break was taken
 15 after which the following
 16 proceedings were had.)
 17 THE VIDEOGRAPHER: We are back on
 18 video record at 1:56 p.m.
 19 MR. GREEN: Okay. I just -- we had
 20 talked about this and we're also going to get a
 21 list of the City of Chicago cases, correct --
 22 MR. ODIM: That is correct.
 23 MR. GREEN: -- that Mr. Clark was
 24 involved in?

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1 specific after the first sentence to give these
 2 examples, the five-year limit, et cetera.
 3 Q. So --
 4 A. The requirement for an affidavit to
 5 be signed, et cetera.
 6 Q. So the -- you had the seven
 7 conclusions of the DOJ report you cited, correct?
 8 A. That's right.
 9 Q. What specific beyond that are you
 10 citing in support of this opinion?
 11 A. The other five citations that are in
 12 footnote number one, the only footnote, they're
 13 also included there that these are clearly
 14 impediments to the --
 15 Q. Other than --
 16 A. -- to the ease of citizens to report
 17 misconduct.
 18 Q. So other than the general materials
 19 found in these reports, you have no other
 20 independent factual basis for coming to this
 21 conclusion?
 22 A. Well, I have no other -- I have no
 23 other resources that I've cited other than the
 24 material listed in my report and as you know a

30 (Pages 117 to 120)

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1 number of the articles and so forth reference this
2 cumbersome, my word. impediment that exists and
3 impairs the ability of citizens to file
4 complaints.

5 Q. Now, when you're talking about
6 reports, are you talking about those newspaper
7 reports, those articles from 29 through 34?

8 A. Yes, that includes that.

9 Q. And what is the factual basis for
10 saying the City even created those impediments?

11 A. Because they're part of the City
12 process. The City -- I consider the City
13 responsible for that process and they can fix it,
14 my term again, if they really wanted to.

15 Q. What is your factual basis for the
16 City allegedly not investigating misconduct that
17 happened more than five years after a CR is
18 issued?

19 A. Because they have a five-year limit
20 and that's contrary to the process of monitoring
21 officers and their conduct.

22 Q. And when you say --

23 A. It sets in place an impairment to
24 really understanding and knowing what -- where

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1 Q. So --

2 A. In terms of opinions.

3 Q. So other than what's in this one to
4 six, are there any other impediments?

5 A. Yes, and these are specific to that
6 issue that I felt were -- were necessary to best
7 make that point, but, as I said earlier, and I
8 want to -- I cannot overstate these five
9 categories are related to one another and
10 reflective of one another and influence one
11 another. They are not solos.

12 Q. You know the sworn affidavit
13 requirement is based on state law, right?

14 A. Yes, I've been offered that --

15 Q. So --

16 A. -- information and I'm aware of it.

17 Q. So are you suggesting Chicago should
18 ignore the law?

19 A. No, I'm suggesting and I'm more than
20 suggesting, I'm recommending, that the City of
21 Chicago get it changed.

22 Q. Well, you agree that Chicago needs
23 to follow the state law, right?

24 A. Chicago needs to follow the state

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1 your malignant officers are and what they're
2 doing.

3 Q. So how often does that actually
4 happen?

5 A. How would I know? Because you have
6 the five-year limit and, by the way, I do not -- I
7 did not do that study. I'm referencing the fact
8 that they consider it an impairment and I agree it
9 would be an impairment.

10 Q. So you don't know exactly how many
11 times that's even affected the investigations of
12 misconduct in the City of Chicago, you personally
13 right now do not know, correct?

14 A. I -- in terms of the raw numbers, I
15 personally did not research that or -- or
16 accumulate those facts.

17 Q. Were there any other impediments
18 beyond the sworn affidavits and not investigating
19 the five-year old complaints that you're citing?

20 A. Any other?

21 Q. Yeah.

22 A. Yeah, there is the opinions in this
23 category of -- of impeding misconduct go from one
24 to six.

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1 law. You are correct.

2 Q. And Chicago didn't create that law,
3 it's a state law, right?

4 A. I'm sure -- I don't know how much
5 stuff was done to get that law passed and make
6 that requirement -- put that requirement into
7 Illinois -- into the Illinois code. I'm not --
8 but I'm confident having been involved in the
9 legislative process, ergo, 311.11 of the Penal
10 Code how these things can be changed with the
11 right effort.

12 Q. Well, this is a shooting case,
13 right?

14 A. Pierre Loury is a shooting case.

15 Q. And do you agree that officer
16 involved shootings in Chicago they're automatic
17 investigations regardless of an affidavit,
18 correct?

19 A. There are.

20 Q. So why would that even matter here?

21 A. It's -- it matters in terms of the
22 influence, A, of the requirement for the affidavit
23 and how it impairs the identification of malignant
24 officers. I'm going to use the term malignant

31 (Pages 121 to 124)

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<p style="text-align: right;">Page 125</p> <p>1 officers or officers that are troublesome or have</p> <p>2 a propensity to be out of policy and it is the</p> <p>3 first level incidentally as stated by Kolts and as</p> <p>4 stated by the Christopher Commission Report of an</p> <p>5 indicator of how you can manage the department and</p> <p>6 keep more serious problems erupting by monitoring</p> <p>7 their behaviors that are reflective of their</p> <p>8 propensity to not follow policy.</p> <p>9 Q. Now, do you know of any example of a</p> <p>10 shooting case in Chicago where there was not an</p> <p>11 investigation done immediately?</p> <p>12 MR. ODIM: Objection. Form of the</p> <p>13 question.</p> <p>14 BY MR. GREEN:</p> <p>15 Q. A police shooting case.</p> <p>16 MR. ODIM: Still objection to the</p> <p>17 question.</p> <p>18 BY THE WITNESS:</p> <p>19 A. You're saying immediately. I don't</p> <p>20 consider the response in Chicago to the police</p> <p>21 shootings as anything close to immediate. There</p> <p>22 are people that come on scene right away, but</p> <p>23 whether the investigation can be put in the</p> <p>24 category of immediate, which incidentally is an</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. And, in fact, they have done?</p> <p>2 A. According to the DOJ report, they</p> <p>3 have.</p> <p>4 Q. So any evidence -- do you have any</p> <p>5 evidence that a single officer involved shooting</p> <p>6 has not been investigated because of the affidavit</p> <p>7 requirement?</p> <p>8 A. No.</p> <p>9 Q. Or not investigated properly?</p> <p>10 A. I would say that my review of this</p> <p>11 case is it was not investigated properly and it's</p> <p>12 reflective of the lack of due diligence as cited</p> <p>13 by the DOJ report.</p> <p>14 Q. Do you have any evidence that a</p> <p>15 single officer involved shooting has not been</p> <p>16 investigated because of the supposed five-year</p> <p>17 limitation?</p> <p>18 A. No.</p> <p>19 Q. Now, you recently gave an identical</p> <p>20 Monell opinion regarding the Chicago Police</p> <p>21 Department in your December 11th, 2017, Lane</p> <p>22 deposition in that case 15 C 1920 for the Monell</p> <p>23 period 2009 to 2015, correct?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 126</p> <p>1 aspect of competence and clarity and determining</p> <p>2 exactly what happened. Immediately --</p> <p>3 BY MR. GREEN:</p> <p>4 Q. Do you have an example --</p> <p>5 A. Sorry. I just want to say this to</p> <p>6 answer your question.</p> <p>7 So I would be -- I would argue</p> <p>8 the point of the term immediate response.</p> <p>9 Q. Do you have an example of a</p> <p>10 shooting -- police shooting in Chicago where there</p> <p>11 was not an investigation done?</p> <p>12 A. I know of no shooting where there</p> <p>13 was not an investigation.</p> <p>14 Q. Now, do you know that the police</p> <p>15 department and IPRA, now known as COPA,</p> <p>16 investigate such -- they -- not only do they</p> <p>17 investigate such shootings, but the Cook County</p> <p>18 State's Attorney investigates every police</p> <p>19 involved shooting here?</p> <p>20 A. That's what I've been informed.</p> <p>21 Q. And do you know that the federal</p> <p>22 authorities also potentially can investigate a</p> <p>23 shooting here?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. And, in fact, why don't we just mark</p> <p>2 this as Exhibit 5. Can you take a look at that,</p> <p>3 please?</p> <p>4 MR. ODIM: While he is looking, I'm</p> <p>5 going to object to, one, relevance, object to,</p> <p>6 two, foundation. I'll object to form on the word</p> <p>7 identical and an objection based upon the</p> <p>8 privileged nature of part of this report, meaning</p> <p>9 subject to the protective order.</p> <p>10 BY MR. GREEN:</p> <p>11 Q. Can you take a look at that.</p> <p>12 A. Okay.</p> <p>13 Q. Is that a fair and accurate copy of</p> <p>14 the November 3rd, 2017, opinion you wrote</p> <p>15 regarding Monell in the Lane case?</p> <p>16 A. I don't know if I can answer that.</p> <p>17 This is a protected document as far as I</p> <p>18 understand it.</p> <p>19 Q. In what way is it protected, are you</p> <p>20 aware?</p> <p>21 MR. ODIM: It uses material subject</p> <p>22 to the protective order. Should we talk about</p> <p>23 this off the record?</p> <p>24 MR. GREEN: Yeah, let's go off the</p>

32 (Pages 125 to 128)

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<p style="text-align: right;">Page 129</p> <p>1 record.</p> <p>2 THE VIDEOGRAPHER: We're going off</p> <p>3 the video record at 2:09 p.m.</p> <p>4 (Whereupon, a break was taken</p> <p>5 after which the following</p> <p>6 proceedings were had.)</p> <p>7 THE VIDEOGRAPHER: We are back on</p> <p>8 the video record at 2:12 p.m.</p> <p>9 BY MR. GREEN:</p> <p>10 Q. All right. By agreement of the</p> <p>11 parties, I'm going to withdraw this as an exhibit,</p> <p>12 but you're familiar with the report you gave in</p> <p>13 Lane as well, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you had a similar Monell</p> <p>16 listing of opinions in that case, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. That's fine.</p> <p>19 MR. GREEN: I'll take back 5 just to</p> <p>20 be cautious.</p> <p>21 MR. ODIM: Okay.</p> <p>22 BY MR. GREEN:</p> <p>23 Q. In the Lane case, in your analysis</p> <p>24 of the Chicago Police Department and the City and</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. And whether the City wanted to or</p> <p>2 not, it was up to the Illinois General Assembly to</p> <p>3 decide that?</p> <p>4 A. If they wanted to change the law. I</p> <p>5 don't know if something could be implemented that</p> <p>6 would satisfy both the law and the need of the</p> <p>7 department to track its officers properly. I</p> <p>8 don't know about that. But I would agree it would</p> <p>9 need -- the best fix would be a correction in</p> <p>10 the -- from my viewpoint, a correction in the</p> <p>11 code.</p> <p>12 Q. Now, what -- what steps, again,</p> <p>13 would you say that Chicago should have taken</p> <p>14 during this time period of 2010 through 2016 --</p> <p>15 MR. ODIM: Objection.</p> <p>16 BY MR. GREEN:</p> <p>17 Q. -- in regard to this?</p> <p>18 MR. ODIM: Objection. Foundation.</p> <p>19 Improper hypothetical.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Well, it's -- as noted by the DOJ</p> <p>22 report and other reports, there has been no</p> <p>23 vigorous, my term, effort to get the law passed</p> <p>24 that would eliminate this impediment.</p>
<p style="text-align: right;">Page 130</p> <p>1 Monell purposes, you looked at the 2009 to 2015</p> <p>2 time period, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Is there anything in this first</p> <p>5 opinion, number one, that has changed in any way,</p> <p>6 this being the 2010 to 2016 time period in regard</p> <p>7 to your opinion regarding the City of Chicago in</p> <p>8 your opinion one?</p> <p>9 A. No.</p> <p>10 Q. Okay. Let's go to opinion two. You</p> <p>11 say "Chicago has failed to take affirmative steps</p> <p>12 to end or remove these impediments."</p> <p>13 Again, what is the factual basis</p> <p>14 in this report to support the claim that the City</p> <p>15 hasn't taken affirmative steps to end or remove</p> <p>16 these impediments?</p> <p>17 A. That I saw nothing in any of the</p> <p>18 material that I reviewed that there have been</p> <p>19 efforts to do that and that was a criticism in the</p> <p>20 DOJ report.</p> <p>21 Q. And, again, the affidavit</p> <p>22 requirement that you're citing, again, is a state</p> <p>23 law, is it not?</p> <p>24 A. It is. As I understand it.</p>	<p style="text-align: right;">Page 132</p> <p>1 BY MR. GREEN:</p> <p>2 Q. So you're talking about lobbying</p> <p>3 efforts?</p> <p>4 A. Well, I -- if you want to discuss</p> <p>5 how it's done, I'm very familiar with it and, yes,</p> <p>6 it includes lobbying, it includes the -- there is</p> <p>7 a legislative process obtaining the sponsor for</p> <p>8 the bill, the support for it, the public outcry</p> <p>9 I'll use that term, et cetera.</p> <p>10 Q. And what is the basis for saying</p> <p>11 that the City of Chicago -- Strike that.</p> <p>12 And what is the basis for saying</p> <p>13 that the City hasn't investigated police involved</p> <p>14 shootings within five years when it automatically</p> <p>15 is investigated?</p> <p>16 A. Well, if you want to use --</p> <p>17 investigation and response I think can be two</p> <p>18 different terms, but I would agree that the City</p> <p>19 police department responds to every shooting event</p> <p>20 by an officer of a civilian.</p> <p>21 Q. And, again, you have in opinion two</p> <p>22 in the Lane case as well, that was for the period</p> <p>23 2009 through 2015, correct?</p> <p>24 A. Well, the Lane -- there is a bit of</p>

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1 a shift in time period. You're correct with Lane.

2 Q. That's what I'm trying --

3 A. There was no -- as far as that --

4 the restriction for the Lane case and the time
5 period was not a factor in the difference in time
6 period for this case.

7 Q. So you're saying there has been no
8 changes shifting to the 2010 to 2016 time period?

9 A. Right, nothing that would change my
10 opinion. So, ergo, I think if you're allowed to
11 see the two and compare them, they would be the
12 same.

13 Q. Now, opinion three, you state "The
14 creation of these impediments and the failure to
15 remove them are the result of deliberate and
16 conscious actions of Chicago and its policymakers
17 despite the clear consequences of allowing police
18 misconduct to go, I assume, go uninvestigated and
19 officer wrongdoers to go without supervision,
20 intervention or discipline."

21 What is the factual basis in
22 this report to support your statement that they
23 create -- that they are failing to remove the
24 creation of these impediments -- Strike that.

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1 What is the factual basis to
2 support your contention that it was a deliberate
3 and conscious action of Chicago and its
4 policymakers?

5 A. Because it's such an obvious
6 impediment.

7 Q. And, again, you're just talking
8 about the affidavits and the five-year
9 requirement, correct?

10 A. Yes, the heartbeat of that opinion
11 are those two main issues. They clearly impair,
12 and I can be more precise, the administration of a
13 well-ordered department.

14 Q. You say that -- what is the factual
15 basis for your contention that there are clear
16 consequences in allowing misconduct to go
17 uninvestigated, is that not assuming that it's
18 going uninvestigated?

19 A. Yes, it's -- it's not an assumption.
20 It's an obvious consequence that any reasonably
21 trained police administrator would know. As an
22 example, citizen comes in, typically from one of
23 the more dynamic parts of the city where police
24 misconduct can -- often occurs and walks in and

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1 says "One of your officers just beat my son near
2 to death and I want to report it." "Sure. Sign
3 here." "What is this?" "This is an affidavit and
4 if we find anything wrong with what you're saying,
5 you're culpable."

6 Q. Mr. Clark, isn't this a shooting
7 case where there is an automatic investigation?

8 A. You asked me a question about the
9 impairment against misconduct and there is a
10 linkage between misconduct and officer involved
11 shootings. Clearly, this is well-known ever since
12 Christopher did his work. So I'll wait for the
13 next -- but I gave you the example. I can
14 continue on with it.

15 Therefore, mother walks out of
16 the precinct having not signed anything. They
17 take any allegation of misconduct from an officer
18 they know is malignant, tear it up, throw it away
19 and he goes on his way for something -- for the
20 next episode. That's what happens and everybody
21 knows it.

22 Q. What is the factual basis to support
23 that officer wrongdoers go without supervision,
24 intervention or discipline?

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1 A. That's well-written about in the
2 literature that I cited in the 48 items of
3 material review.

4 Q. So other than the DOJ report
5 conclusions, are you also including in there those
6 newspaper articles?

7 A. And the other five reports as
8 listed, yes. There is a substantial foundation
9 for this conclusion and the observation and the
10 conclusion and the antidotal stories that support
11 it as well.

12 Q. Now, what are your qualifications to
13 opine on the state of mind of the City or its
14 policymakers?

15 A. Only what they do. Only what's
16 occurred and only the history of the City.

17 Q. So you don't know the actual state
18 of mind of the City or its policymakers, do you?

19 A. I do not know their mentality or
20 their heart, correct.

21 Q. If all shootings are investigated as
22 in this underlying case, why did these supposed
23 impediments even matter?

24 A. Because they're reflective of the

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1 investigation itself and whether the officers know
2 or would expect pursuant to their shootings by
3 their experience in the -- and what's occurred in
4 the past in terms of their other brother officers
5 or sister officers that have been involved in
6 shootings.

7 Q. In fact, the shooting case involving
8 Laquan McDonald occurred before this particular
9 case, did it not?

10 A. One year before and that's, I think,
11 very important to note that -- no, McDonald, I
12 think, was even before. What's important to note
13 is there is the history over the years -- I
14 thought you were talking about another case -- but
15 that I am aware of that this spans over a number
16 of years and with no changes.

17 Q. But wouldn't the officers in this
18 particular case be well-aware of shooting
19 investigations?

20 A. Of course they're aware that someone
21 is going to come out and take a look, right.
22 That's it.

23 Q. And how do you reconcile supposed
24 deliberate and conscious impediments with general

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1 has there been anything to change your opinion in
2 this case in regard to the time period here from
3 2010 to 2016?

4 A. No.

5 Q. Opinion four. You say "These
6 failures impede the conduct of complete, fair and
7 unbiased investigations of police misconduct and
8 lead to foreseeable risk of harm to others and are
9 things that a reasonable Chicago policymaker would
10 be aware of."

11 What is the factual basis to
12 support that it impedes the conduct of complete,
13 fair and unbiased investigations, these failures?

14 A. What occurred here in this case, and
15 I cited them, and I could give you a better
16 example I think in particular to this case and --

17 Q. I'm sorry. Is that referring to
18 those first four elements you -- you cited
19 regarding the investigation?

20 A. No, the entirety of the report. I
21 know we're going through it step-by-step, but the
22 entirety of the report is reflective to that and
23 so it was never intended for these to be totally
24 standalone statements and the -- there was another

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1 orders or even state law?

2 A. Because the general orders require
3 an investigation and the investigation doesn't
4 meet the requirement.

5 Q. And the City of Chicago also has an
6 independent citizen review authority. They're now
7 called the independence Civilian Office of Police
8 Accountability, correct?

9 A. Yes.

10 Q. What about other large cities like
11 New York or Los Angeles, they don't have full-time
12 civilian investigative bodies, do they?

13 A. They have policies and procedures,
14 some of which are wanting, and others that are
15 good. I can give you some examples.

16 Q. But they don't have an independent
17 review authority like Chicago, do they?

18 A. The City of Los Angeles has a police
19 commission that serves as an independent authority
20 and New York has a very fine policy established by
21 Bratton when he was the commissioner and it's
22 generally well done.

23 Q. Again, this opinion three in the
24 Lane case, that covered the period 2009 to 2015,

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1 part -- answer to your question.

2 And the impairments as I already
3 stated and I started to give you an example of the
4 mother who comes in to complain about the beating
5 of her son and they require the affidavit are --
6 are known to be clear impairments to any police
7 administrator and how they ever crept their way
8 into Illinois's law I think is -- is interesting,
9 would be an interesting historical review.

10 Q. That is the law nonetheless?

11 A. It is the law and I think as stated
12 by the Department of Justice commentary in their
13 report that there are a number of things that
14 somehow become part of the agreement between the
15 police league and the City, et cetera, that now
16 stand in the way of a -- of a good investigative
17 process in police involved shootings.

18 Q. And you're -- you're referring to
19 the Collective Bargaining Agreement?

20 A. Yes, I think that probably -- as
21 stated by the Department of Justice that there are
22 some real problems with that and that that
23 authority or that ability to make a policy needs
24 to be restored back into the City.

35 (Pages 137 to 140)

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1 Q. So your opinions in this regard are
2 totally based upon what you read in the DOJ
3 report?

4 A. The DOJ report and the other -- can
5 we agree that when I say DOJ all of the
6 foundational articles and reports that -- that
7 agree one way or another with the findings that I
8 cited in my report?

9 Q. Your --

10 A. The collective --

11 Q. The 48 items and the DOJ report
12 conclusions?

13 A. Right, which I think are a very
14 excellent recount of what the problems are.

15 Q. What is your factual basis as they
16 lead to foreseeable risk of harm to others?

17 A. Because when a person gets the
18 notion that they can act with impunity, then harm
19 follows. Ergo, the differences between the NORSAT
20 and the SIS unit, the LAPD SIS unit is a good
21 example.

22 Q. Do you have any training in
23 psychology?

24 A. I'm the father of ten children.

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1 and with a wink and a nod and say "It's okay" or
2 you can really look at it to find out what the
3 truth is and that's entirely different. So I'm
4 not at all critical of going to the scene of a
5 shooting, but that does not excuse the department
6 for its response and its investigative competence.

7 Q. You're assuming that's how they
8 approach all these investigations?

9 A. Well, certainly in this case and in
10 the other cases I've had, I saw it as very
11 problematic and not only that I see it as with the
12 reports that we're consistently going back to and
13 very simply stated if I were the
14 detective/commander looking over the photographs
15 of the scene of this shooting, I'd say "Wait a
16 second. There is a bullet hole up here. How the
17 hell did that happen and what have you guys done
18 to recover that slug and how -- and match it to
19 Hitz gun?" And if I hear "Well, we haven't done
20 that yet, sir," "Well, get your hips over there
21 and get that slug." That's what you do.

22 Q. So that's your understanding of what
23 occurred in this case?

24 A. That did not occur in this case and

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1 So --

2 Q. Other than that.

3 A. Nine of them daughters, but, no, I
4 am not a certified psychiatrist.

5 Q. And what is your factual basis that
6 a reasonable Chicago policymaker would be aware of
7 the risk?

8 A. Because in the profession there
9 is -- there is an acceptance of some basic
10 standards, administrative standards, I'll say it
11 that way, and there -- they're private
12 organizations as well; the International
13 Association Chiefs of Police, CALEA, the
14 Department of Justice, COPS, PERF, P-E-R-F, all
15 caps. So none of these are in contrast with one
16 another in terms of their agreement in how a
17 well-ordered department is run and that's the
18 foundation for this report and I think the DOJ
19 report.

20 Q. How does it mean anything if all
21 officer involved shootings, such as this
22 underlying case, are investigated?

23 A. Because what we're putting our
24 finger on is you can go to the scene of a shooting

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1 that's what I'm talking about.

2 Q. What you explained occurred in this
3 case?

4 A. As an example. There is far more
5 than that, but this is really one of the obvious
6 ones as discussed by Scott in his report.

7 Q. So you're basing it on Scott's
8 report basically?

9 A. No, I saw the photograph myself. I
10 know where that window was. I saw the bullet hole
11 in the window. I saw where the little guy fell.
12 It's -- okay. I'm sorry. I get a little excited
13 here.

14 Q. Again, in Lane, there was a 2009 to
15 2015 timeframe for this opinion.

16 Has anything changed in this
17 opinion for this particular case in the 2010 to
18 2016 time period?

19 A. No.

20 Q. Okay. Opinion five. "These
21 failures and impediments were moving force -- were
22 the moving force behind the death of Lounsbury, in
23 that they created an environment which gave
24 defendant officers had license to operate with

36 (Pages 141 to 144)

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1 impunity and without fear of punishment."

2 What is the factual basis for
3 the assertion that the failures here were the
4 moving force?

5 A. Again, the reports, the DOJ report
6 has this is a consequence of incompetence or
7 looking the other way, another good term, when you
8 go out to the scene of a shooting.

9 Q. Now, what is your understanding of
10 what the term moving force means?

11 A. That it is the heartbeat of the
12 issue, that it is the -- that it is the central
13 issue of the issue -- of the discussion at hand
14 and that is -- that's the way I meant it to be.

15 Q. What's the factual basis for the
16 notion that defendant officers had license to
17 operate without impunity and without fear of
18 punishment?

19 A. Because that is in the -- in the
20 profession, it's known as an opportunity -- it's
21 known to provide the opportunity for officers to
22 do what they do with a feeling of impunity. That
23 attitude is cultural. That's the Monell. Values,
24 attitudes and beliefs. I know someone is going to

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1 brew ha ha about McDonald.

2 In other words, here's the
3 thing. Has McDonald did a -- done a change in the
4 department to influence its cultural values, what
5 officers do and how they deport themselves, how
6 they tactically deploy, et cetera, which I talk
7 about here, and I think the answer is no and
8 that's what brings me here for this.

9 Q. They knew they could be investigated
10 by entities outside the City, did they not?

11 A. I think they -- I don't know what
12 they know and, as I said, I don't know what their
13 thinking process is. I only know what they did
14 and it's a very logical conclusion that this
15 attitude of impunity is still a driving force and
16 still at this time was a -- was a part of the
17 cultural values of the department.

18 Q. So, essentially, they also knew they
19 could be charged with a crime and be sued civilly,
20 no?

21 A. I'm assuming they would know that.

22 Q. And also you're presuming within
23 this whole review that this shooting was
24 unjustified in the first place, are you not?

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1 come out and look at my shooting, but I know I can
2 say anything I want. They're not going to
3 question it, they're going to accept it and we'll
4 go on and if I recount a story justifying fear for
5 myself, great bodily harm or death, I'll be
6 justified and no one will question it.

7 Q. As we mentioned, the Laquan McDonald
8 event happened before this shooting, correct?

9 A. As I remember it, yes.

10 Q. So --

11 A. But I was not involved in that
12 investigation.

13 Q. Wouldn't the officers had to know --
14 well, you're familiar with that generally, are you
15 not?

16 A. Yes, I am.

17 Q. And wouldn't the officers had to
18 know that they would be investigated or could be
19 investigated by the City?

20 A. You know, that's an interesting -- I
21 would -- that would be a logical conclusion for
22 someone who is not so steeply involved in -- that
23 one -- I can still do what I can do because
24 it's -- nothing has changed even though there is a

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1 A. I'm not assuming anything, no.
2 Remember, I said earlier in the deposition very
3 early on my issue is the Monell, not whether or
4 not there was even a gun there.

5 Q. Well, if Louny pointed a gun at
6 Officer Hitz, he would be justified in shooting
7 Louny, correct?

8 A. I think you've already asked me that
9 question at least twice, and now this will be the
10 third time, and I said, yes, if Louny -- if Hitz
11 under the circumstance had a reasonable belief
12 that he was in danger now of being shot by Louny,
13 of course he could defend himself.

14 Q. And if that's the case, would you
15 agree the City policies would not have been the
16 moving force behind Officer Hitz shooting Louny?

17 A. Well, the City's written policy is
18 if you are reasonably -- and I talk about sanctity
19 of life, obvious reasonable alternatives, dire
20 circumstances and if Hitz is -- per the policy and
21 the training, if you are in reasonable fear of
22 great bodily harm or death, you can defend
23 yourself.

24 Q. So is that a yes?

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1 A. That would be yes.

2 Q. And, again, in Lane for this
3 opinion, this was 2000- -- in that case was 2009
4 through 2015, is there anything that would change
5 your opinion for this case that was 2010 to 2016
6 in regard to your opinion five?

7 MR. ODIM: I'm just going to again
8 object on the same basis I objected before. I
9 thought it was withdrawn, but --

10 MR. GREEN: You can have a standing
11 objection.

12 MR. ODIM: Yeah, so the standing
13 objection of, you know, foundation, form, let's
14 see, the privilege issue. Okay.

15 BY THE WITNESS:

16 A. Nothing has changed.

17 BY MR. GREEN:

18 Q. Nothing has changed. Okay. Opinion
19 six. "It was reasonable on August 24th, 2014, for
20 defendant officers to believe that no proper
21 investigation of their actions would be instituted
22 and no such investigation would find them culpable
23 of any actions that they might take against Lory
24 including, but not limited to, the use of

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1 maybe they could all be written in one big
2 paragraph, but they are different to some degree
3 and they're -- therefore, are broken into the six
4 sections, but they are in many ways duplicate one
5 another.

6 Q. What is your factual basis for the
7 opinion that no such investigation would find them
8 culpable of any actions that they might take?

9 A. I saw in the -- in this
10 investigation that that is apparent because of the
11 obvious differences in what the physical evidence
12 says occurred and what the officers say occurred.
13 Very significant and obvious and the other is that
14 this also appears in the DOJ, et al opinions.

15 Q. Regarding this particular case?

16 A. Not regarding this particular case.

17 Regarding the conduct, the policies and procedures
18 and the cultural issues involving the department
19 itself. But regarding this case in particular,
20 I've already mentioned that they're very
21 significant and obvious physical indicators about
22 the way the shooting really occurred.

23 Q. All right. So your opinion is based
24 on the notion that Defendant Hitz used excessive

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1 excessive force by shooting and killing him, the
2 failure to intervene to stop the shooting officer
3 from shooting Lory and the subsequent concealment
4 of that misconduct."

5 What is your factual basis for
6 the opinion that it was reasonable on August -- in
7 this particular case for the officers to believe
8 no proper investigation of their actions would be
9 instituted? This was a shooting case, was it not?

10 A. Okay. So you asked me two things.
11 The last answer is, yes, it was a shooting case
12 and I think I've already answered this in a number
13 of ways that if you have the attitude that you can
14 do anything without being held culpable for it,
15 then you do anything and I said it's reasonable
16 for them to believe that there would be no proper
17 investigation and that is -- that sparks or is the
18 driving force to be willing or doing things that
19 are contrary to the law and policy knowing you
20 will not be held accountable.

21 Q. So, in essence, these are
22 duplicative opinions here, are they not?

23 A. Well, I was waiting for that one.
24 They are slight -- as you know, I thought that

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1 force?

2 A. It's based on the fact that the
3 physical evidence belies the statement made by
4 both officers.

5 Q. So perhaps he didn't use excessive
6 force, is that what you're saying?

7 A. Well, that's curious. Because if --
8 if he didn't -- the question then becomes if he
9 didn't use excessive force, then why would he tell
10 such a different story? So that's a problem. But
11 what I was addressing was we have this story about
12 what happened only from the surviving officer.
13 Lory is dead. So -- but his body speaks
14 certainly and the trajectory of those slugs
15 speaks.

16 Q. In your opinion, it's based on the
17 notion that Defendant Riordan failed to intervene
18 in this case?

19 A. He was not present when the shots
20 were fired and that's not what the paragraph says.

21 Q. It says "The failure to intervene to
22 stop the shooting officer from shooting Lory."

23 A. Well, that's related to Riordan
24 saying "Get the hell back here. Don't go after

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1 him. Stay with me."
 2 Q. Oh, so that's what you're saying
 3 upfront?
 4 A. Yes.
 5 Q. What do you mean by the subsequent
 6 concealment of the misconduct? What is the
 7 factual basis for that comment?
 8 A. There is no comment about the
 9 obvious misconduct.
 10 Q. Your last phrase is the subsequent
 11 concealment of misconduct.
 12 A. Right.
 13 Q. That's referring I believe to
 14 Defendant Riordan.
 15 MR. ODIM: Objection. Foundation
 16 and form.
 17 BY MR. GREEN:
 18 Q. I'm just asking about your own
 19 opinions here.
 20 A. Right. Yeah, the example I cited --
 21 that's why I put in the policy tell the truth,
 22 make truthful statements.
 23 Q. All right. So, again, in the Lane
 24 case was from 2009 to 2015. Is there anything to

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1 Q. -- that they would be somehow
 2 duplicative in nature?
 3 A. Not somehow. That they're directly
 4 duplicative of one another.
 5 Q. So would it be fair to say you
 6 essentially have five opinions here, but there are
 7 subsections of those opinions?
 8 A. Yes. Yeah, I think that's fair.
 9 Q. Okay.
 10 A. That was the intent and I realize
 11 you got to be very precise. So we worked on this.
 12 Q. Okay.
 13 A. Okay. I'll wait.
 14 Q. Let's go to that opinion seven. So
 15 what is the factual basis for your opinion that
 16 there is a de facto policy in this regard for
 17 failure to investigate?
 18 A. Well, again, that was a finding of
 19 the DOJ, et al, and also apparent in the facts of
 20 the shooting of Louny.
 21 Q. Now, can you name every case that
 22 you're familiar with since 2010 in this time
 23 period that Chicago failed to investigate officer
 24 involved shootings?

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1 change your opinion in this regard for this
 2 particular case from 2010 to 2016?
 3 A. No.
 4 Q. Okay. The second category you have
 5 is "Failure to investigate." Opinions seven
 6 through 11. Opinion seven "Chicago had a de facto
 7 policy or widespread custom or practice of failing
 8 to investigate allegations of police misconduct
 9 including the use of excessive force by
 10 discharging guns at fleeing civilians."
 11 Mr. Clark, what is the factual
 12 basis for the opinion that Chicago had a de facto
 13 policy, a widespread custom or practice in this
 14 regard?
 15 A. Okay. So you'll notice there is
 16 a -- there is -- the first piece is impairing or
 17 impeding the investigation of his conduct and now
 18 this centers down to the failure to investigate
 19 itself and you'll see that the paragraphs mirror
 20 one another because they are linked to one another
 21 and --
 22 Q. Are you saying about opinion seven
 23 through 11 --
 24 A. Yes.

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1 MR. ODIM: Objection. Form.
 2 BY THE WITNESS:
 3 A. Well, I think you asked me the
 4 question. The issue is how they -- if you use the
 5 term investigate in terms of responding to and
 6 showing up and taking over and assuming the
 7 responsibility for it, that's part of an
 8 investigation and they do that.
 9 BY MR. GREEN:
 10 Q. So, essentially, you admit that they
 11 are investigating the shootings, you just have
 12 some comments on how they investigate the
 13 shootings?
 14 A. Well --
 15 MR. ODIM: Objection. Form.
 16 BY THE WITNESS:
 17 A. The semantics and you're right. If
 18 we simply -- I'm clearly acknowledging the reality
 19 that Chicago Police first respond, they take the
 20 first handle, then it goes to IPRA for another
 21 review, et cetera. The issue is when I say
 22 failing to investigate, I'm talking about the
 23 process itself, the looking the other way issues,
 24 et cetera, as I have given you examples for.

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<p style="text-align: right;">Page 157</p> <p>1 BY MR. GREEN:</p> <p>2 Q. So your basis for saying those</p> <p>3 investigations were improper or inadequate, or at</p> <p>4 least in this particular instance is what you</p> <p>5 cited in the beginning of your report, regarding</p> <p>6 the inconsistencies that you believe occurred?</p> <p>7 A. Yes, and there are more, but I</p> <p>8 wanted to be succinct in some regard, but also be</p> <p>9 illustrative of the issue, but there are a lot of</p> <p>10 deficiencies in the investigation.</p> <p>11 Q. And other than the ones that you</p> <p>12 cited in the front and that you've testified to so</p> <p>13 far, what else was wrong with the investigation?</p> <p>14 A. Well, IPRA has -- well, there are</p> <p>15 some things in the 28-page -- I think it's like</p> <p>16 28-page IPRA report, but let me give you a couple</p> <p>17 that come to mind. Scott cites some. Let's talk</p> <p>18 about the gun scene -- found at the scene. The</p> <p>19 fact that it didn't go through ATF, that the</p> <p>20 analysis -- raising the serial number didn't occur</p> <p>21 although it was apparently filed down, there is</p> <p>22 ways to get that up. The DNA sample taken I think</p> <p>23 it was from the gun or the clip -- clip, no DNA</p> <p>24 sample was taken from the officers to see if</p>	<p style="text-align: right;">Page 159</p> <p>1 Q. And when you say the cases you've</p> <p>2 had, you're talking about that list we'll get of</p> <p>3 the cases -- the Monell cases that you've</p> <p>4 reviewed --</p> <p>5 A. Right.</p> <p>6 Q. -- from the Chicago Police</p> <p>7 Department in your experience as an expert</p> <p>8 witness?</p> <p>9 A. Yes.</p> <p>10 Q. And, again, in Lane, for this</p> <p>11 opinion it was 2009 to 2015, anything change your</p> <p>12 opinion in this case for the 2010 to 2016 period?</p> <p>13 A. No.</p> <p>14 Q. Okay. Opinion eight. "The Chicago</p> <p>15 Police Department failed to take any affirmative</p> <p>16 steps ending their de facto policy of failing to</p> <p>17 properly investigate allegations of police</p> <p>18 misconduct including the use of excessive force by</p> <p>19 discharging guns at fleeing civilians."</p> <p>20 What is the factual basis for</p> <p>21 this opinion? Is it merely redundant of the</p> <p>22 previous one?</p> <p>23 A. Well, it's fairly redundant, but</p> <p>24 it's a little bit of a difference.</p>
<p style="text-align: right;">Page 158</p> <p>1 they -- if it belonged to some of them. I don't</p> <p>2 consider the workup on the car that fled the scene</p> <p>3 at all adequate. These are very, very obvious in</p> <p>4 my opinion. The trajectory analysis at the scene</p> <p>5 at the time. The preservation of the scene</p> <p>6 including locating the slug that missed and where</p> <p>7 it went and recovering it and then bringing it</p> <p>8 back, making it clear it came from -- from the</p> <p>9 officer's gun I can -- I can -- if you give me a</p> <p>10 few more minutes I can think of -- those are</p> <p>11 examples. I didn't talk about them in my report,</p> <p>12 but those are things that come up very obviously</p> <p>13 to a -- to a detective.</p> <p>14 Q. And you never went to detective</p> <p>15 school, did you?</p> <p>16 A. No, I did go to -- I ran a detective</p> <p>17 unit and we were pretty good at it.</p> <p>18 Q. And what's your -- what are you</p> <p>19 saying that -- your basis for saying the</p> <p>20 investigations you have named are part of a</p> <p>21 widespread practice?</p> <p>22 A. Because that's the finding of the</p> <p>23 DOJ based on my look at the cases I've had, I find</p> <p>24 that also to be true. So I embrace that.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. What is the difference?</p> <p>2 A. This has to do with the actions that</p> <p>3 you would expect Chicago to take which would have</p> <p>4 been at some level certainly if the quality of</p> <p>5 this investigation has been turned over to a</p> <p>6 police administrator, then there would be</p> <p>7 something close to this is really bad, you guys</p> <p>8 don't ever do -- and don't you ever do this again</p> <p>9 and that would change considerably the police</p> <p>10 response -- or the department's response to this</p> <p>11 type of an event.</p> <p>12 Q. Are you saying that the City did not</p> <p>13 commission various reports from 2010 to 2016</p> <p>14 seeking to improve how it investigates allegations</p> <p>15 of police misconduct?</p> <p>16 A. Clearly there -- there is a -- I</p> <p>17 think there is a City report I cited. The Police</p> <p>18 Accountability Task Force Report, which is in</p> <p>19 April 2016.</p> <p>20 Q. So wouldn't that be reflective of an</p> <p>21 effort to improve in this area?</p> <p>22 A. Yeah, it's reflective whether --</p> <p>23 here is the issue and I think --</p> <p>24 Q. Would you not call it an affirmative</p>

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1 step?

2 A. Yeah. But, see, we're talking about
3 something that's more deeply embedded than just
4 punching out another report. There is a plethora
5 of reports. That's why I considered you have a
6 very well-documented Monell just on the basis of
7 the reports and so you punch out a report and
8 nothing gets done. That's the issue here.

9 Q. Well, are you saying that the
10 recommendations contained in these reports don't
11 constitute affirmative steps?

12 A. Well, they do constitute an
13 acknowledgement. I guess that's affirmative. You
14 have to know what the problems are before you can
15 take care of them, but they knew what the problems
16 were long ago, long before 2016.

17 Q. Now, again, in the Lane case was
18 2005 to 2015, I'm sorry, 2009 to 2015. Anything
19 to change your opinion eight here in this case
20 from 2010 through 2016?

21 A. No.

22 Q. Okay. Opinion nine. "The failure
23 to properly investigate complaints about officer
24 misconduct are the result of the deliberate and

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1 clearly part of the problem as identified by the
2 DOJ, et al.

3 Q. What is the factual basis for you
4 saying that the policymakers were deliberate --
5 there were conscious actions of Chicago and its
6 policymakers to not act in that way?

7 A. Because there is no affirmative
8 document in the entirety of the review of this
9 material regarding Lory's shooting death. It
10 says "Did this wrong. Failed to investigate
11 properly. You're fired or you're being
12 transferred. I'm going to get somebody who knows
13 how to do this right," et cetera, and that is the
14 responsibility of the department, the chain of
15 command.

16 Q. So you're assuming, again, that
17 there was an unjustified shooting in this case?

18 A. I don't know how many times -- I
19 think we're probably in a dozen area. I'm here to
20 talk -- I'm not talking about the justified
21 shooting. I'm here to talk about the obvious
22 deficiencies that I think are linked to -- could
23 be linked to an unjustified shooting, but
24 certainly express the Monell aspects of the

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1 conscious actions of Chicago and its policymakers
2 despite the clear consequences of allowing police
3 misconduct to go uninvestigated and officer
4 wrongdoers to go without supervision, intervention
5 or discipline."

6 Again, what's the factual basis
7 for failure to properly investigate complaints
8 about officer misconduct? Is it what you
9 testified to in the last two previous sub opinions
10 here?

11 A. Yes, but this one is directed to the
12 policymakers --

13 Q. And how is that different?

14 A. -- and the police administration.

15 Q. And what is your factual basis to
16 say that they failed to properly investigate?

17 A. Because they -- A, what happened
18 here in this instance and the report, that had to
19 go through the chain of command for some sort of
20 approval and recognition which are blatantly
21 deficient and, therefore, I consider the chain of
22 command to be culpable for their failure to see
23 what was obvious in terms of the report itself
24 regarding this specific incident and this is

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1 department, its values, its attitudes and beliefs.

2 Q. So you're inferring -- you're
3 inferring the deliberateness or consciousness of
4 the actions of the policymakers?

5 A. I don't know how else you can
6 identify such a thing, only what happens and what
7 has happened repeatedly that there would be a
8 responsibility when it happens over and over and
9 over again.

10 Q. Well, again, this opinion nine in
11 Lane it was from 2009 to 2015, do you have
12 anything to change your opinion for this period
13 2010 through 2016?

14 A. No.

15 Q. Okay. Opinion ten. "The deliberate
16 and conscious decision to maintain an
17 ineffectively flawed system by which to
18 investigate police misconduct was the driving
19 force behind the death of Lory."

20 Again, what factual basis do you
21 have for the deliberate and conscious decision to
22 maintain this ineffective and flawed system, is it
23 the same as to what you've referred to in opinion
24 nine?

41 (Pages 161 to 164)

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1 A. Yes.
 2 Q. And the same for the ineffective and
 3 flawed system?
 4 A. Right. Because the investigators
 5 operate within the system.
 6 Q. And what, again, is the factual
 7 basis for the driving force behind the death of
 8 Loury that this would be?
 9 A. Well, one of the things that comes
 10 to mind to answer your question is what you posed
 11 to me earlier. You asked me am I saying that --
 12 that Hit or -- excuse me -- Hines, H-I-T-Z --
 13 Q. Hitz.
 14 A. -- did not shoot Loury in defense of
 15 his life? Well, I offer to you if he was doing
 16 that, why didn't he just say it in the -- the
 17 physical evidence belies what he said -- how he
 18 says it occurred. So if you -- if you have a
 19 system them embraces what the officer says without
 20 question, and in particular when the physical
 21 evidence is so obvious, then you have a driving
 22 force for misconduct and the answer is yes.
 23 Q. And if Loury did point a gun at
 24 Officer Hitz, none of this would apply, correct,

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1 BY THE WITNESS:
 2 A. To that degree, you are correct.
 3 BY MR. GREEN:
 4 Q. Opinion 11. While it is outside my
 5 purview to assess credibility of parties, it is
 6 easy to see why defendant officers may feel it is
 7 to their benefit to simply deny plaintiff's
 8 allegations and take their chances with the flawed
 9 investigative and disciplinary process to sort out
 10 truth." Aren't you assessing the credibility of
 11 the parties with this opinion?
 12 A. Well, I think that's exactly
 13 contrary to what I said in the first line of that.
 14 Q. Despite of putting that clause in
 15 there, is this not a credibility assessment of
 16 whether they're telling the truth or not?
 17 A. I'm linking as a last opinion in
 18 this segment the -- what the consequences would
 19 be. It's easy to see what this consequence would
 20 be. And I'm -- I clearly wanted, and I did put in
 21 there, that I'm not making a credibility
 22 statement, but there are consequences to this type
 23 of a system.
 24 Q. So you're not assuming that the

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1 and if he was in fear of his life?
 2 MR. ODIM: Objection. Foundation,
 3 improper hypothetical and argumentative.
 4 BY THE WITNESS:
 5 A. You know, the -- the IPRA report
 6 itself says the mere fact that if Loury had a gun
 7 and the mere fact of having a gun does not justify
 8 shooting him. It has to be more than that. There
 9 has to be --
 10 BY MR. GREEN:
 11 Q. I said pointing a gun.
 12 A. -- a set of facts.
 13 Q. I said pointing a gun.
 14 A. Pardon me?
 15 Q. I said pointing a gun at him.
 16 A. If he was pointing a gun in such a
 17 manner that it was objectively reasonable that
 18 this was a threat of great bodily injury or death,
 19 as I said before, then Hitz could shoot him.
 20 Q. Just like it happened in your own
 21 personal situation?
 22 MR. ODIM: Objection. Foundation.
 23 relevance and form.
 24

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1 officers are lying?
 2 A. I never assumed for the opinions the
 3 officers are lying. That's up to the jury to
 4 determine as I have stated in the second paragraph
 5 of my -- the first page.
 6 Q. Going to your third main opinion.
 7 Failure to discipline.
 8 A. I'd like to take a break.
 9 Q. How about we take a break here.
 10 THE VIDEOGRAPHER: We are going off
 11 the video record at 3:01 p.m. and this is the end
 12 of video media three.
 13 (Whereupon, a break was taken
 14 after which the following
 15 proceedings were had.)
 16 THE VIDEOGRAPHER: We are back on
 17 the video record at 3:08 p.m. and this is the
 18 beginning of media unit four.
 19 BY MR. GREEN:
 20 Q. All right. Mr. Clark, you
 21 previously talked about the sanctity of life and
 22 how it is to be used in that people are trained in
 23 it when deciding when to discharge a firearm or
 24 not, is that correct?

42 (Pages 165 to 168)

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1 A. Yes.
 2 MR. ODIM: Object -- objection to
 3 form.
 4 BY MR. GREEN:
 5 Q. Where is this training for sanctity
 6 of life, in what curriculum is it?
 7 A. Well, it's -- it's embedded in the
 8 California POST and most of the POSTS I've seen.
 9 Nevada comes to mind, Arizona, Utah, but I cannot
 10 cite you a -- Texas -- the sections on the use of
 11 lethal force by a police officer, but I can
 12 cite -- I cannot cite that to you in the Illinois
 13 POST right now.
 14 Q. And would that sanctity of life
 15 analysis also include the sanctity of life of a
 16 person who is a law enforcement officer who is
 17 placed in fear of their own life?
 18 A. Of course.
 19 Q. So let's move onto the failure to
 20 discipline general opinion -- opinions 12 through
 21 17. Opinion 12 you state "The City of Chicago had
 22 a taped -- de facto policy or widespread custom or
 23 practice of failing to effectively discipline
 24 police misconduct including in the use of

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1 right way to say it. The failure to discipline
 2 generates violations of policy clearly.
 3 Q. So this, again, just assumes that
 4 there was an effective -- ineffective
 5 investigations will create -- Strike that.
 6 A. I thought we were talking about
 7 discipline here, not investigations.
 8 Q. Well, you cited it earlier in
 9 referring back to your previous opinions that
 10 somehow it's your -- in this -- this is assuming
 11 that once there has been a violation that it's not
 12 being disciplined, correct?
 13 A. Right.
 14 Q. And what is the basis for that other
 15 than your general referral to the conclusions of
 16 the DOJ report?
 17 MR. ODIM: Objection. Foundation.
 18 Misstates his testimony.
 19 BY THE WITNESS:
 20 A. The conclusions for this report come
 21 from the DOJ and not from the incident because I
 22 don't know how much discipline had ever been
 23 applied to either officer.
 24

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1 excessive force by discharging guns at fleeing
 2 civilians" and what is the factual basis for this
 3 opinion that it's a widespread custom or practice
 4 of failing to discipline or effectively
 5 discipline?
 6 A. Right. It's connected to the first
 7 conduct on the impeding of the investigations of
 8 misconduct, the failure to investigate the
 9 misconduct and now this section is -- and these
 10 opinions 12 through 19 comment on the failure to
 11 discipline and, as I said earlier, if you do
 12 not -- you know what a true discipline implies and
 13 what a -- the results of the failure to discipline
 14 adequately or correctly is tantamount to no
 15 discipline whatsoever. So -- and I considered
 16 that the discipline that as cited in the DOJ, et
 17 al, and in this case was reflective of that.
 18 Q. So --
 19 A. Mostly the DOJ report is reflective
 20 of the failure to discipline.
 21 Q. So you're assuming that there were
 22 out-of-policy actions in regard to excessive force
 23 that were not disciplined?
 24 A. Well, no, not -- that's not the

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1 BY MR. GREEN:
 2 Q. And do you have any other examples
 3 of where police misconduct was not disciplined?
 4 A. Other examples?
 5 Q. Individual examples.
 6 A. Well, the reports cite them and I
 7 agree with them. That's what -- why I put this
 8 here.
 9 Q. And the reports you're saying are
 10 the ones you listed in your 48 things in the -- 48
 11 references in the beginning of your report?
 12 A. Right, plus my experience as a
 13 police administrator.
 14 Q. And -- but for the Chicago Police
 15 Department the prior cases you've been involved
 16 in?
 17 A. Right.
 18 Q. Now, again, the Lane case was 2009
 19 through 2015. Anything to change your opinion in
 20 this regard for the 2010 to 2016 period?
 21 A. No.
 22 Q. Okay. Opinion 13. "The low
 23 percentage of complaints which result in a
 24 sustained finding, the absence of any meaningful

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1 disciplinary action, the frequency in which
2 discipline is lowered or reversed and the absence
3 of any real consequence for wrongdoing caused the
4 defendant officers in this case to have every
5 reason to believe before they were involved in the
6 incident on April 11th, 2016, resulting in the
7 death of Lorry that they would never be
8 effectively investigated or meaningfully
9 disciplined for any misconduct towards Lorry,"
10 what is the factual basis in your report for this
11 allegation or opinion?

12 A. Well, the low number of sustained is
13 one of the items listed and we talked about that
14 in terms of --

15 Q. And that's in the DOJ conclusion?

16 A. Twenty-eight -- item 28. And then
17 the DOJ and this is a well-known consequence of --
18 of failure to discipline or sustain misconduct and
19 this paragraph links those two things into could
20 this or would it be a factored influence, the
21 shooting, and the answer is, yes, that's the way
22 it was intended to be written.

23 Q. Now, other than the conclusions in
24 the DOJ report that you cite and that other report

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1 2010 to 2016?

2 A. I think it was something like three
3 or four percent.

4 Q. And what should the percentage rate
5 be for a sustained rate?

6 A. That's interesting because it would
7 be -- you'd have to factor in having the
8 complaints, the flow of complaints on impaired.
9 Having said that, I -- my understanding is
10 something around eight -- at least eight to ten
11 percent are typical in the nationally.

12 Q. You're saying that that's a national
13 standard, eight percent?

14 A. As I remember the literature in that
15 regard.

16 Q. Now, does that include cities over
17 500,000?

18 A. I don't think it includes -- there
19 is any differences in any kinds of complaints
20 regardless of the size of the city, although there
21 is probably some, but Chicago is a large
22 department and I think eight percent would be low
23 in terms of sustained.

24 Q. What agency adheres to that standard

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1 that you mentioned on number 28, what other
2 records did you review to reach such a conclusion?

3 A. Records?

4 Q. Yeah, any records.

5 MR. ODIM: Well, objection to form
6 again.

7 MR. GREEN: All right.

8 BY MR. GREEN:

9 Q. What materials or records did you
10 review other than the conclusions of the DOJ and
11 that one report?

12 MR. ODIM: Again, objection. That
13 misstates his testimony.

14 BY THE WITNESS:

15 A. This opinion 13 comes from the items
16 I listed in the report. I can go out of that, the
17 confines of those I think 48 to say this is
18 well-known in the profession and there has been a
19 lot written about it, but I can't -- I use this as
20 a basis for this paragraph, those items listed in
21 the 48.

22 BY MR. GREEN:

23 Q. What was the percentage rate of
24 sustained during this relevant Monell period of

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1 of three percent or, I'm sorry, eight percent?

2 A. I don't think that any agency sets a
3 bright line at eight percent, but the issue as
4 identified by the studies typically in particular
5 starting with the Christopher Commission, et
6 cetera, is that the officers generating the
7 complaints have to be attended to, have to be paid
8 attention to.

9 Q. Going back to this standard you say
10 of eight percent, where is it published, where can
11 I find it?

12 A. I can't remember where I read it. I
13 think it's in -- it's a DOJ study, but four out of
14 a hundred is very low and I think Futterman
15 comments on that in his study.

16 Q. Futterman or Fudderman?

17 A. Futterman.

18 Q. So are you differentiating at all
19 between the different systems across the country
20 in making that analysis?

21 A. I'm not -- as you know, I don't -- I
22 don't cite a number here at all. I'm talking
23 about in paragraph 13 that there is a low
24 clearance rate or finding very low and there are a

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<p style="text-align: right;">Page 177</p> <p>1 number of impairments even before you get to this 2 point. 3 Q. So just to say -- 4 A. Let me -- 5 Q. -- it's low is based on what? 6 A. The numbers themselves as in the 7 material I've listed. 8 Q. Would you agree it's impossible to 9 determine with a case by case analysis which 10 outcomes are acceptable in the way of a percentage 11 rate of sustained cases? 12 MR. ODIM: Objection. Foundation 13 and objection to form. 14 BY THE WITNESS: 15 A. I think pegging a number, specific 16 number, would require a specific study which I've 17 not seen. That's the best way I can answer it. 18 Certainly four out of a hundred is very low. 19 BY MR. GREEN: 20 Q. Do you know what causes the 21 discipline to be lowered or reversed? 22 MR. ODIM: Objection. Foundation. 23 Form. 24</p>	<p style="text-align: right;">Page 179</p> <p>1 decisions in the Chicago Police Department? 2 A. The chain of command and I 3 understand -- it depends on the level of 4 punishment. I'll use that term. We can go up to 5 the chief of police. 6 Q. And do they consider recommendations 7 made by the superintendent? 8 A. Of course. 9 Q. And they consider the existence of 10 an Independent Police Review Authority in this 11 process, too? 12 A. I hope so. 13 Q. You put this in the context of the 14 officers in this case saying "Because of the low 15 sustained rate and the reversal and the lowering 16 of it, that this caused them to believe they would 17 never be effectively investigated or meaningfully 18 disciplined for any misconduct towards Lounsbury," 19 what is the factual basis in your report for this 20 causation element? 21 A. Well, we discussed that quite a bit 22 already in the deposition. The propensity of 23 persons in every profession without accountability 24 to act with impunity and it's legendary.</p>
<p style="text-align: right;">Page 178</p> <p>1 BY THE WITNESS: 2 A. I don't know what you mean. I don't 3 understand your question. 4 BY MR. GREEN: 5 Q. Well, when you're referring in this 6 "The frequency in which discipline is lowered or 7 reversed," you're saying is not appropriate here, 8 what do you use to determine that? 9 A. That's a finding specifically out of 10 the DOJ report. 11 Q. And -- 12 A. And that speaks to if the 13 investigator understands going in that if I leave 14 enough room, there can be an appeal and reversal, 15 they can overcome this and I've still on paper 16 done an investigation so that the claim of an 17 investigation can be done -- I mean, can be made. 18 That's what that refers to. And a competent 19 investigation nails down all the aspects of what 20 occurred so that there is little or no room for an 21 appeal should -- should that occur and there would 22 be a just finding by the chain of command for 23 proper discipline. 24 Q. And who makes the disciplinary</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. And so you can't really say what's 2 in an officer's head, do you? 3 A. Well, I don't attempt to do that 4 other than another way of saying it is a jury 5 reviewing the facts would reasonably make this 6 conclusion. They would determine the facts, but I 7 did not climb into either one of the officer's 8 heads. I didn't try to. 9 Q. So saying that it caused it would be 10 just speculation on your part? 11 A. No. There's, again, going back to 12 the intent of this report is the Monell. This is 13 the ocean that these two officers swim in and 14 they're influenced by it, the currents, the tides, 15 everything that is going on, the turbulence and 16 this is what I'm trying to say. I'm using this as 17 a metaphor. I'm talking about the ocean, not the 18 officers in particular. 19 Q. In Lane, this was 2009 to 2015, the 20 timeframe for this opinion. For purposes of this 21 case from 2010 to 2016, have you changed this 22 opinion in any way? 23 A. No. 24 Q. Okay. Opinion 14. "Failures in the</p>

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1 process of disciplining officers who engage in
2 misconduct are the result of the deliberate and
3 conscious actions of Chicago and its policymakers
4 despite the clear consequences of allowing a
5 finding of police misconduct to be subject to the
6 fair, consistent and meaningful application of
7 discipline in order that wrongdoers were not left
8 with the belief that their bad behavior would
9 effectively go unpunished," is this essentially a
10 redundant opinion from the prior two opinions?

11 A. Yes.

12 Q. And you have the same factual basis
13 for it as you testified to in the prior two
14 opinions?

15 A. Yes.

16 Q. And what do you mean by the phrase
17 "meaningful application of discipline"?

18 A. Well, we've talked about it for a
19 number of hours that there would be -- if the
20 officers or any employee understands they're
21 responsible for what they do, then it certainly --
22 and I think it's very logical would influence what
23 they do if they're responsible for it. If they're
24 not responsible, if they can go out, and in

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1 given at the academy complies with the POST
2 standard and the POST standard in Illinois is the
3 national standard.

4 Q. Opinion 14 -- well, in Lane, for the
5 opinion it was 2009 to 2015. Is there anything in
6 this case from 2010 to 2016 that would change this
7 opinion 14?

8 A. No.

9 Q. Okay. Opinion 15. "At the time of
10 this incident, the City had failed to make any --
11 or to take any meaningful steps to curb or
12 otherwise correct these failures in the
13 disciplinary process," what is the basis of your
14 opinion that they have done nothing to correct or
15 perceive failures in the disciplinary process?

16 A. It said at the time of the incident,
17 we can't forget that, and that's clearly
18 documented with the DOJ report which was the
19 beginning of 2017. So that's their finding and
20 it's based on all the other documents as well.

21 Q. The Police Accountability Task Force
22 Report was underway during -- prior to this
23 incident, was it not?

24 A. It was.

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1 particular an officer with a badge and a gun, and
2 the opportunity to operate with no accountability,
3 that's a very dangerous situation.

4 The -- the statement I find it
5 in most POST's, I don't know if it's in Illinois,
6 officers are given two unique powers. This is the
7 police powers statement. They have to -- in
8 Illinois, like all officers in the world -- in the
9 country, have to be certified. The power of
10 arrest, the power to use lethal force. The
11 authority does not come from an authoritarian
12 dictator, but from the will and the consent of the
13 people who require them to use these powers with
14 the utmost care and restraint. That's the
15 professional standard.

16 Now, if there is no requirement
17 for the utmost care and restraint, then you fall
18 into this dark area of police misconduct,
19 unaccountability and the consequences.

20 Q. As you stated earlier, the City of
21 Chicago policies and procedures are sufficiently
22 reasonable based on Illinois POST's, correct?

23 A. The training and certainly that's
24 one of the statements by Williams. The training

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1 Q. And so you do not consider that a
2 step in trying to improve the disciplinary
3 process?

4 A. Well, if it's -- if it was done with
5 the intent to make the change, implement the
6 changes, I would agree, but clearly the admission
7 then is reflective of what was going on when Lorry
8 was shot.

9 Q. What do you consider a meaningful
10 step?

11 A. Oh, goodness. First, that there
12 would be a -- acceptable and professionally solid
13 investigative process for officer involved
14 shootings, that there would be the implementation
15 of -- this is not difficult by the way. I mean,
16 this is well-established in the profession, that
17 there would be a meaningful system put in place
18 called EWS that would monitor all misconduct --
19 all conduct and all uses of force and put in --
20 and the system would notify supervisors and
21 commanders and the chain of command of any --
22 of -- flag any bumps in the road and identify
23 individuals that need special attention, which
24 would include retraining, discipline.

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1 reassignment, those things, the fixes.

2 Q. Where --

3 A. There would be a -- there would be a
4 vigorous system embedded in the department to turn
5 the ship into a better direction and that -- that
6 was part of my training in the Command College how
7 you move values, attitudes and beliefs. This is
8 supposed to be -- and embed the department with
9 those values that would be reflective of what is
10 going on in the department and then see the
11 benefits to the community that would occur.

12 Q. Where have they been implemented,
13 this EWS?

14 A. Pardon me?

15 Q. The procedures, EWS, where else have
16 they been implemented? What other departments?

17 A. Oh, you can buy them off the shelf.
18 You can buy these systems off the shelf now
19 they're so common and the literature is
20 voluminous, but -- and there are some departments
21 that have certain levels of -- that when, say,
22 I'll use an example a taser, when a taser is used
23 that it goes into the EWS on that officer and if
24 it is reflective to an overuse of the taser that

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1 other programs they have in regard to the type of
2 conduct you just mentioned in the EWS?

3 A. Only as it's reflected in the
4 reports that I cited in the -- and that's clearly
5 deficient as identified by the DOJ report.

6 Q. So, again, you're relying just on
7 the DOJ report conclusions and its backup for it?

8 A. Can we agree the DOJ, et al, the
9 other reports that support it, there is nothing
10 contrary in the other reports that are found in
11 the DOJ report?

12 Q. All right. And, again, the Lane was
13 2009 to 2015. Anything to change your opinion for
14 2010 to 2016 in regard to opinion 15?

15 A. No.

16 Q. Okay. Opinion 16. "The failure of
17 Chicago to maintain an effective disciplinary
18 system which prevented police misconduct and
19 protected against a culture that gives officers
20 the belief that their bad behavior would
21 effectively go unpunished amounted to a de facto
22 policy of failing to supervise officers, including
23 the proper use of force when confronted with the
24 decision to discharge a firearm against a

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1 that automatically comes out of the system and
2 goes to the supervisor.

3 Q. Well, you're familiar with --

4 A. And that the yearly fitness reports
5 always has the results of the EWS and that there
6 is a yearly fitness report and the yearly fitness
7 report comments on the various aspects of the
8 profession that are expected. Okay. I'll wait
9 for the question.

10 Q. Are you familiar with IPRA's review
11 of other conduct of officers and their
12 disciplinary review?

13 A. Not -- the only IPRA report I read
14 regarding this case cited is the shooting. Are
15 you talking about another IPRA report?

16 Q. So you're not familiar with what
17 IPRA does in reviewing people's past conduct or
18 officer's past conduct?

19 A. I'm -- I'm aware that IPRA does
20 reviews, but I don't consider it -- I consider it
21 part of the problem, not part of the solution.

22 Q. Are you familiar with the Chicago
23 Police Department's performance evaluations or
24 non-disciplinary intervention programs or any

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1 civilian."

2 Again, is this redundant
3 essentially of the last three opinions in regard
4 to failure to discipline?

5 A. I would agree and it's also my
6 commentary such as it was just a minute ago also
7 reflects on this opinion.

8 Q. Is there any distinctions in this
9 particular opinion as opposed to the other three,
10 the last three?

11 A. The distinction is this is specific
12 to the failure to maintain the system, the
13 effective system. It probably could be written in
14 the same paragraph of 15.

15 Q. Again, Lane was 2009 to 2015, this
16 one is 2011 (sic) to 2016. Anything to change
17 your opinion 16 between the two time periods?

18 A. No.

19 Q. Opinion 17. "These de facto
20 policies of a failure to discipline and supervise
21 were the moving force behind each of Lorry's
22 death -- or Lorry's death." Pardon me.

23 What's the factual basis for
24 this conclusion that this was the moving force

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1 behind his death?
 2 A. Nothing other than what I've said
 3 and I would agree that it is -- it should be -- it
 4 could be written better in terms of it appears to
 5 be one of the moving forces, not the total moving
 6 force.
 7 Q. And, again, this is all contingent
 8 on the use of force in this particular case by
 9 Officer Hitz actually being excessive in nature?
 10 MR. ODIM: Objection. Misstates his
 11 testimony and form.
 12 BY THE WITNESS:
 13 A. So --
 14 BY MR. GREEN:
 15 Q. Being a constitutional violation.
 16 A. Whether or not Loury was
 17 unconstitutionally shot to death, I would agree,
 18 but the report is based on the circumstances of
 19 the department.
 20 Q. Again, 2009 to 2015 was the Lane
 21 period. For the purposes of opinion 17, is there
 22 any changes for opinion 17 in -- for this time
 23 period 2010 to 2016?
 24 A. No.

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1 Q. Okay. Opinion 18. "Chicago had a
 2 de facto policy or widespread custom of sustaining
 3 and disciplining officers less often for
 4 misconduct against African-American civilians."
 5 Now, what is the factual basis in your report for
 6 this claim?
 7 A. That's in the DOJ report as well as
 8 there are other reports as well regarding the
 9 racial bias that occurs.
 10 Q. And what are the actual statistics
 11 for your opinion on this?
 12 A. I can't cite them as I sit here
 13 other -- without going into the report, but there
 14 is a clear disproportionate number vis-a-vi
 15 African-Americans and use of force and arrests, et
 16 cetera.
 17 Q. And what did you review to reach
 18 this conclusion other than the DOJ's report's
 19 general conclusions and the other materials cited?
 20 A. Nothing else.
 21 Q. And are you aware of any variables
 22 that were taken into account in their analyses?
 23 A. Such as? I don't know what you
 24 mean.

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1 Q. In doing their statistical analysis.
 2 A. You mean variables in terms of?
 3 Q. Of how it was done.
 4 A. I still don't know what you mean
 5 other than this was -- their ethnic status, are we
 6 talking about --
 7 Q. So you're not -- you're not familiar
 8 with what their methodology was in how they came
 9 up with their statistics?
 10 A. How they sorted it out in order to
 11 justify or to explain the differences other than
 12 by race, no, I'm not. Only that it does exist and
 13 that if you crunch the numbers by race it clearly
 14 leans into the African-American population and
 15 it's wrong.
 16 Q. And you don't know what safeguards
 17 they used in their analyses to make sure it was
 18 accurate?
 19 A. Safeguard? You mean --
 20 MR. ODIM: Objection to form.
 21 BY THE WITNESS:
 22 A. Looking at how they register their
 23 race or I don't understand when you say --
 24

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1 BY MR. GREEN:
 2 Q. In essence -- in essence, you just
 3 don't know the methodology used by the
 4 Department --
 5 A. No.
 6 Q. -- of Justice or any of the other
 7 reports?
 8 A. No, but nationally there are far
 9 more -- in proportion to the population, there are
 10 far more African-Americans in terms of percentage
 11 in jail and young men who get arrested and what
 12 that means to the rest of their lives and the
 13 charges placed against them. I did a study one
 14 time for -- in Valencia on the number of resisting
 15 arrests against black youngsters vis-a-vi white
 16 youngsters. It's huge. It's the propensity --
 17 the issue is the propensity of the department to
 18 lean heavily and, therefore, have a tremendous
 19 impact on the lives of African-Americans versus
 20 people of other races.
 21 Q. So what are the reports or analyses
 22 that you personally did in Chicago?
 23 A. None.
 24 Q. Now, again, Lane was 2009 to 2015.

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1 For opinion 18, do you have anything that would
2 change this opinion for the 2010 to 2016 time
3 period in this Hudson case?

4 A. No.

5 Q. Opinion 19. "The City of Chicago
6 failed to take any steps to curb this
7 disproportionality," what basis do you have for
8 this opinion?

9 A. The statistics themselves and the
10 facts as stated in the studies themselves and that
11 there has been no change.

12 Q. What about the disciplinary system
13 that creates the disproportionality, what is it
14 that you state that causes this
15 disproportionality?

16 MR. ODIM: Objection. Form.
17 BY THE WITNESS:

18 A. Can you read the question? I want
19 to answer this correctly. Can you read that back?

20 BY MR. GREEN:

21 Q. You're saying they failed to take
22 any steps to curb the disproportionality that
23 because you say there is a widespread custom of
24 sustaining and disciplining officers less often

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1 for misconduct against African-American civilians.
2 So what is it in the disciplinary system itself
3 that creates the disproportionality?

4 A. Okay. The DOJ -- let me make --
5 start with this. The DOJ report I think very
6 correctly and with great clarity identifies the
7 systematic problem in the Chicago Police
8 Department regarding their racial bias, in
9 particular African-American individuals. And that
10 this is a Monell issue as I can identify it as a
11 Monell issue, but also the -- the impact of the
12 police services and the quality of life in the
13 city including their safety, the -- their
14 perception of a confidence in the police
15 department, their reliability on the police
16 themselves for their own protection and their
17 safety are all reflective of the -- this fact of
18 disproportionate bias.

19 Q. All right.

20 A. And, in conclusion, should have been
21 addressed long ago, needs to be addressed now and
22 was not addressed during the time of -- the timing
23 that we're talking about and I consider it to be
24 part of the Monell.

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1 Q. All right. In the -- talking about
2 the timing for opinion 19, in Lane 2009 to, excuse
3 me, 2015, is there anything to change your opinion
4 in 19 for this time period 2010 to 2016?

5 A. No.

6 Q. Okay. Going on to your fourth,
7 failure to train general opinion, opinions 20 to
8 23A.

9 Opinion 20. "Chicago had a de
10 facto policy or widespread custom or practice of
11 failing to train officers in the proper use of
12 force generally and with respect to the discharge
13 of firearms against civilians and fleeing suspects
14 in particular, and in failing to train officers in
15 the proper use of intervention in another
16 officer's use of force generally and with respect
17 to the discharge of firearms against civilians and
18 fleeing suspects in particular," what are the
19 factual bases for this claim of failure to train?

20 A. Well, first of all, there is gross
21 failures in what the two officers did in their --
22 vis-a-vi their training which was don't separate
23 from your partner, don't flee solo, don't -- stay
24 in cover, stay in communication, don't put

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1 yourself deliberately in the way of harm's way
2 where you -- when there is an obvious, reasonable
3 alternative, all those things, and that this also
4 is a very significant part of the DOJ report, et
5 al.

6 Q. Did you review the training
7 materials for these two officers?

8 A. No, I did not see their training
9 documents as I recall.

10 Q. So what did you review to reach this
11 conclusion? Was it what you stated, the DOJ
12 report?

13 A. The DOJ report and the fact that
14 they are POST certified police officers in the
15 State of Illinois.

16 Q. So you're going on your general
17 knowledge of the POST requirements for the State
18 of Illinois?

19 A. Yes, and the other things I
20 mentioned.

21 Q. Meaning the DOJ report?

22 A. Right. The DOJ clearly sees this --

23 Q. So you don't have any actual
24 statistics for this claim, this is just your --

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1 what you just stated your basis was?

2 A. Nothing in my report is based on
3 statistics.

4 Q. You can't say whether the training
5 materials of these particular officers addressed
6 this issue or not, can you?

7 A. Holy cow. Of course, I can. This
8 is -- this is 101. This is Police Tactics 101 and
9 anybody who does this gets pulled off the line and
10 when I was doing the training in -- as -- in the
11 patrol school I saw somebody that had that kind of
12 propensity they went back to the jail. They were
13 not allowed on the street. Not certified for
14 patrol.

15 Q. But you personally can't say whether
16 the City of Chicago actually did train these
17 officers in the way they were supposed to act on
18 the street there?

19 A. Let me say with confidence they were
20 trained and this was one of the issues clearly in
21 the -- in the DOJ report because they were --
22 they -- and, by the way, Williams, they tossed
23 that training into the toilet and -- when they hit
24 the streets because of the customs and practices

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1 fleeing suspects in particular."

2 Is this essentially a redundant
3 opinion as to opinion 20?

4 A. Yes, except that opinion 20 is the
5 training and 21 is the affirmative steps, the
6 continuing reenforcement.

7 Q. And what is the factual basis to say
8 that the City was not taking affirmative steps to
9 ameliorate any perceived custom or practice in
10 this regard?

11 A. Because there is no evidence that it
12 was ever done, there was no commentary about it
13 and it is not in any of the reports including the
14 DOJ report.

15 Q. And what about have you reviewed any
16 training materials that were in process of being
17 renovated or -- or redone in the City of Chicago
18 during this period?

19 MR. ODIM: Object to form.

20 BY THE WITNESS:

21 A. Only the recommendations by the DOJ
22 and the City Commission.

23 BY MR. GREEN:

24 Q. So you reviewed no other materials?

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1 of the department.

2 Q. When you say they, you mean the
3 individual officers?

4 A. And that the officers on the line as
5 a whole do that because it is the custom and
6 practice of the Chicago Police Department to
7 ignore it and not to -- not to reenforce it.

8 Q. And the Lane case was 2009 to 2015.
9 For this opinion 20, do you have the same opinion
10 or no changes to it for the purpose of this case
11 from 2010 to 2016?

12 A. No -- no changes.

13 MR. ODIM: I just want to insert the
14 reiteration of the --

15 MR. GREEN: You can have a standing
16 objection.

17 MR. ODIM: -- those objections to
18 make sure. Okay.

19 BY MR. GREEN:

20 Q. Opinion 21. "Chicago failed to take
21 affirmative steps to ameliorate this custom or
22 practice of failing to train its officers in the
23 proper use of force generally with respect to the
24 discharge of firearms against civilians and

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1 A. Correct.

2 Q. So you can't say whether this issue
3 was addressed or not beyond what you saw in those
4 reports?

5 A. Not beyond the timeframe as listed
6 in my report.

7 Q. All right. Again, Lane was 2009 to
8 2015. Do you have any changes to this opinion 21
9 in regard to this case, the Hudson case, from 2010
10 to 2016?

11 A. No.

12 Q. Opinion 22. "The failure of Chicago
13 to maintain an effective training system which
14 prevented police misconduct and protected against
15 the culture that gives officers the belief that
16 their bad behavior would effectively go unpunished
17 amounted to a de facto policy of failing to train
18 officers including in the proper use of force when
19 confronted with the decision to discharge a
20 firearm against a civilian." Again, is this
21 essentially the same opinion as cited in 20 and
22 21?

23 A. Yes.

24 Q. And you have the same basis for this

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<p style="text-align: right;">Page 201</p> <p>1 opinion?</p> <p>2 A. Yes.</p> <p>3 Q. And you reviewed the same materials</p> <p>4 or didn't review the same material as you</p> <p>5 mentioned in 20 and 21?</p> <p>6 A. Correct.</p> <p>7 Q. Are you aware of any improvements or</p> <p>8 changes implemented in the five years prior to the</p> <p>9 year 2016?</p> <p>10 A. Prior to or since?</p> <p>11 Q. Prior to the shooting of 2016.</p> <p>12 A. No, nothing prior to that.</p> <p>13 Q. Are you aware of some after 2016?</p> <p>14 A. No, I've not been made aware of, but</p> <p>15 I'm hopeful there have been or will be.</p> <p>16 Q. Again, for opinion 22, Lane was 2009</p> <p>17 to 2015, do you have any change in this opinion 22</p> <p>18 for the purposes of this case for the time period</p> <p>19 2010 to 2016?</p> <p>20 A. No.</p> <p>21 Q. Okay. Opinion 23A as we had talked</p> <p>22 about earlier. "City of Chicago and CPD's failure</p> <p>23 to train officers in the proper use of force with</p> <p>24 respect to the discharge of firearms against</p>	<p style="text-align: right;">Page 203</p> <p>1 find him. I'll find out who he is when we take</p> <p>2 that driver and give him a little bit of a</p> <p>3 squeeze. So that's the conditioned response,</p> <p>4 muscle memory, and that's what I'm talking about</p> <p>5 here.</p> <p>6 Q. And in addition to that, you're</p> <p>7 basically basing the same review of materials for</p> <p>8 this opinion 23A as the previous three opinions?</p> <p>9 A. Yes.</p> <p>10 Q. And in what way was anyone involved</p> <p>11 in this specific case not sufficiently trained in</p> <p>12 use of force, Officer Hitz, Riordan?</p> <p>13 A. Riordan and Hitz both demonstrate</p> <p>14 improper training. Because even though they were</p> <p>15 taught -- I'm very confident they were taught how</p> <p>16 to do this. They both abandoned that reality and</p> <p>17 went headlong into the utmost of stupidity. I</p> <p>18 don't know how else to say it.</p> <p>19 Q. So --</p> <p>20 A. Riordan leaves his radio car behind.</p> <p>21 I mean, what a dilemma. He hears shots fired. I</p> <p>22 understand he wants to get to his partner, but</p> <p>23 it's a mess.</p> <p>24 Q. In -- Lane was 2009 to 2010 -- I'm</p>
<p style="text-align: right;">Page 202</p> <p>1 civilians and fleeing suspects in particular was</p> <p>2 the moving force behind Louri's death."</p> <p>3 Now, what factual basis do you</p> <p>4 have in this report that this was -- the failure</p> <p>5 to train was actually the moving force behind</p> <p>6 Louri's death?</p> <p>7 A. The training what I had in mind when</p> <p>8 that was written for the cases was we have a</p> <p>9 process in the training it's called muscle memory</p> <p>10 or conditioned response, which is designed to</p> <p>11 eliminate the instinctive response officers or</p> <p>12 humans have that get in the way of the proper</p> <p>13 tactic. An example is you have an officer intent</p> <p>14 on making an apprehension that jumps out of the</p> <p>15 car and runs headlong into chase after a suspect</p> <p>16 leaving his partner behind, not knowing what kind</p> <p>17 of problems his partner is facing or his partner</p> <p>18 faces, too, et cetera.</p> <p>19 That is sort of an instinctive</p> <p>20 from a young officer wanting to make the arrest,</p> <p>21 go after the guy, but the conditioned response</p> <p>22 trained is I'm not going to do that, I've got a</p> <p>23 guy in the car, he is there, I've got to stay with</p> <p>24 my partner, I'm going to let this guy go. I'll</p>	<p style="text-align: right;">Page 204</p> <p>1 sorry -- 2015. In your opinion 23A, is it the</p> <p>2 same, any changes in this opinion for this case</p> <p>3 from 2010 to 2016?</p> <p>4 A. No.</p> <p>5 Q. Now, going to your final code of</p> <p>6 silence opinion, opinions 23B, as we said, to 28.</p> <p>7 Chicago -- 23B. "Chicago had a de facto policy or</p> <p>8 widespread custom or practice of ignoring, denying</p> <p>9 or covering up the bad actions of a colleague or</p> <p>10 colleagues, or, in other words, a code of</p> <p>11 silence," what basics do you have in this report</p> <p>12 for this claim?</p> <p>13 A. They come from three sources; the</p> <p>14 report itself, the incident here and my -- my own</p> <p>15 personal experience as an administrator, law</p> <p>16 enforcement officer.</p> <p>17 Q. And that was in Los Angeles County?</p> <p>18 A. Right.</p> <p>19 Q. Other than Los Angeles County and</p> <p>20 the reports you read here, was there any other</p> <p>21 basis?</p> <p>22 A. No, I'm talking about all the 48</p> <p>23 items. That's my answer.</p> <p>24 Q. And where in the shootings between</p>

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1 2009 and the period -- well, sorry -- Strike that.
 2 Is your perceived code of
 3 silence unique to the Chicago Police Department?
 4 MR. ODIM: Objection. Form.
 5 BY THE WITNESS:
 6 A. No.
 7 BY MR. GREEN:
 8 Q. So other departments you perceived
 9 as you define the code of silence today have the
 10 same issues?
 11 A. Yes, they -- it is an issue in the
 12 profession, not only just in the police
 13 profession, but we're talking about police. It's
 14 an issue everywhere and it has to be attended to
 15 constantly by the line -- by the chain of command.
 16 Q. In fact, as you stated, it's common
 17 to some extent in all professions, correct?
 18 A. Yes. Even the lawyers, I think.
 19 Q. And even expert witnesses perhaps?
 20 A. Correct.
 21 Q. So in the Lane case from -- you
 22 know, covered opinion 23 from 2009 to 2015, was
 23 there anything to change your opinion in this case
 24 for the time period 2010 to 2016 for this

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1 further, now that is a classic code of silence
 2 example.
 3 Q. This is the person from the
 4 Independent Police Review Authority, not an acting
 5 officer, correct?
 6 A. No, I'm talking about the first two
 7 detectives that come out and then there is a
 8 two-hour gap as you know I talk about it and then
 9 they wind up going into the station, getting
 10 interviewed, no recording, just --
 11 Q. Are you aware of the frequency of
 12 shootings in that area at that time?
 13 A. I don't know exactly how many, but
 14 the -- Chicago gets a lot of shootings, but --
 15 okay. I'll wait for the next question. So that's
 16 an example. That's what I'm talking about here.
 17 Q. Do you identify each instance of
 18 deliberate indifference that you cite here in
 19 failure to ameliorate other than what's -- you
 20 cited in these reports?
 21 A. Well, clearly, the DOJ says you guys
 22 are not -- when I say you guys, the Chicago Police
 23 Department, I'm getting a little tired, sorry, I
 24 don't want to talk a little bit higher level. The

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1 particular case?
 2 A. No.
 3 Q. Opinion 24. "The failure to
 4 ameliorate the code of silence despite being
 5 placed on notice and acknowledging its existence
 6 is the result of the deliberate and conscious
 7 actions of Chicago and its policymakers."
 8 What factual basis do you have
 9 in this report for this claim that there was
 10 deliberate and conscious actions of the Chicago --
 11 Chicago and its policymakers not to ameliorate
 12 this perceived code of silence?
 13 A. They come from two sources as I
 14 understand your question. One is the reports.
 15 You keep referring back to them. The other is --
 16 Q. That's the one you cited in your --
 17 A. Right.
 18 Q. -- report?
 19 A. Right. But the -- and I'm going to
 20 use this as an example. The investigator,
 21 including IPRA later on, the Chicago Police
 22 accident investigator comes to the scene within
 23 very short order of the shooting, takes a look,
 24 sees the bullet hole, ignores it, does nothing

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1 Chicago Police Department is doing -- is not
 2 acknowledging the problem of the code of silence
 3 to the degree that it will prevent it from
 4 occurring wherever possible, see it for what it is
 5 when it occurs and that's -- certainly is
 6 demonstrated in the incident.
 7 Q. And what would you say the City
 8 should have done differently over the years?
 9 MR. ODIM: Objection. Foundation.
 10 Objection. Improper hypothetical.
 11 BY THE WITNESS:
 12 A. I've given a lot of thought to that
 13 kind of question and I know I said it repeatedly
 14 values, attitudes and beliefs. First and
 15 foremost, the line has to embrace the importance
 16 of embracing the truth of wherever it is and
 17 whatever occurs and as painful as it may be in
 18 terms of what it does to the brother officer
 19 misconduct has to be addressed, has to be tended
 20 to and reported because in the end it's not only
 21 reflective of the officer's safety, but the safety
 22 of those around that officer and the community and
 23 that if the attitude of the line, which is
 24 fostered and fed as a desire of the entire

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<p style="text-align: right;">Page 209</p> <p>1 organization, that the police serve the community</p> <p>2 to make them safe and protect them from the bad</p> <p>3 and the evil, I'll use that term, then it fits</p> <p>4 with eliminating to the best extent possible the</p> <p>5 code of silence.</p> <p>6 BY MR. GREEN:</p> <p>7 Q. Again, opinion 24, for Lane it was</p> <p>8 2009 to 2015. Is your opinion 24 not changed for</p> <p>9 the purposes of this period of time 2010 to 2016?</p> <p>10 A. No.</p> <p>11 Q. Okay. Opinion 25. "Chicago created</p> <p>12 an environment that nurtured a code of silence and</p> <p>13 that made defendant officers believe they had</p> <p>14 license to operate with impunity without fear of</p> <p>15 punishment."</p> <p>16 What is the factual basis for</p> <p>17 this claim in regard to Officer Hitz and Officer</p> <p>18 Riordan?</p> <p>19 A. The sequence of these five</p> <p>20 overarching issues and the 29 specific opinions</p> <p>21 are -- have a beginning and an end. The code of</p> <p>22 silence is the end. And so it's the case of the</p> <p>23 code of silence builds in the very beginning on</p> <p>24 the department's failure to discipline, et cetera.</p>	<p style="text-align: right;">Page 211</p> <p>1 A. No.</p> <p>2 Q. Again, in opinion 25, Lane was from</p> <p>3 2009 to 2015, are there any changes in this</p> <p>4 opinion 25 for the purposes of this case 2010 to</p> <p>5 2016?</p> <p>6 A. No.</p> <p>7 Q. Okay. Opinion 26. "Chicago's</p> <p>8 deliberate and conscious choice to nurture a code</p> <p>9 of silence and their failure to ameliorate it was</p> <p>10 the moving force behind the death of Lounsbury."</p> <p>11 Again, what are the factual</p> <p>12 bases to say that the code of silence caused the</p> <p>13 death of Lounsbury?</p> <p>14 A. This particular sentence falls in</p> <p>15 the category of the other one I wanted to correct</p> <p>16 that I'm not saying this is the singular issue,</p> <p>17 it's cumulative and I think, better said, the jury</p> <p>18 considering the facts of this case would -- would</p> <p>19 reasonably conclude -- a jury or police</p> <p>20 administrator would reasonably conclude than</p> <p>21 continue on with that statement.</p> <p>22 Q. So you're saying the code of silence</p> <p>23 wasn't the moving force in and of itself behind</p> <p>24 the death of Lounsbury?</p>
<p style="text-align: right;">Page 210</p> <p>1 All of that cumulative opinion rests on these last</p> <p>2 opinions on the code of silence. They create the</p> <p>3 soup for the code of silence to operate.</p> <p>4 Q. Now, you said earlier you're aware</p> <p>5 of Rule 14, you reviewed that?</p> <p>6 A. That's why I put specific to Rule</p> <p>7 14.</p> <p>8 Q. Are you aware of the sustained</p> <p>9 amount of Rule 14's in the City of Chicago?</p> <p>10 A. You know, I don't remember if it was</p> <p>11 even addressed in the material given to me, but --</p> <p>12 Q. How about --</p> <p>13 A. The answer is, no, I don't know.</p> <p>14 Q. And Rule's 21 to 22 regarding</p> <p>15 criminal conduct or observance of misconduct?</p> <p>16 A. I'm aware that there are rules</p> <p>17 regarding that.</p> <p>18 Q. And spars, summary punishment for</p> <p>19 violations of administrative activities?</p> <p>20 A. The issue is how is it enforced and</p> <p>21 when is it enforced?</p> <p>22 Q. And how about resignations under</p> <p>23 investigation, are you aware of any of those</p> <p>24 statistics?</p>	<p style="text-align: right;">Page 212</p> <p>1 A. Correct.</p> <p>2 Q. And which, if any, of the officers</p> <p>3 were involved in past conduct where the code of</p> <p>4 silence was present?</p> <p>5 A. I'm not aware of any other than in</p> <p>6 this environment, then an officer can say things</p> <p>7 that the physical evidence belies. Here is the</p> <p>8 thing about physical evidence. Physical evidence</p> <p>9 is neutral. It takes no side. Physical evidence</p> <p>10 doesn't lose its memory and physical evidence</p> <p>11 tells the truth.</p> <p>12 Q. Again, Lane was from 2009 to 2015.</p> <p>13 For purposes of opinion 26, have you made any</p> <p>14 changes to this opinion 26 in this case for 2010</p> <p>15 to 2016?</p> <p>16 A. No.</p> <p>17 Q. Opinion 27. "In this case, the</p> <p>18 inadequate CPD and IPRA investigations, the lack</p> <p>19 of a finding of misconduct including for false and</p> <p>20 misleading statements and the failure of defendant</p> <p>21 officers to intervene and report the misconduct of</p> <p>22 others and the failure to discipline the officers</p> <p>23 involved are hallmarks of a code of silence."</p> <p>24 What is the basis in this report</p>

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1 to say it's a hallmark of a code of silence?

2 A. Well, a hallmark is the identifier.
3 That's why I used the word, not in this but the
4 other, and without it I think the true facts of
5 this shooting would have come to the surface.

6 Q. And could you state which action
7 evidences code of silence in this particular case?

8 A. Do you want me to give you some
9 particulars because I've given a number of them?

10 Q. Other than what you've already
11 testified to.

12 A. Well, I'm content. I would
13 reference Scott's report I think is very excellent
14 in terming -- in documenting time, trajectory, et
15 cetera.

16 Q. All right. Lane was from 2009 to
17 2015. For opinion 27, the same thing, 27 -- for
18 the purposes of this timeframe 2010 to 2016, is
19 there anything that would change your opinion for
20 this case?

21 A. No.

22 Q. Finally, opinion 28. "Any
23 reasonable officer in the CPD during 2010 to 2016
24 would have been aware of the systemic flaws in

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1 what I'm commenting on. I don't consider -- I
2 don't hold the City as -- as expected to be
3 perfect. That's -- that's not part of the human
4 condition, but certainly anybody that has reviewed
5 Chicago and its problems, including its death rate
6 by gunfire, would have to say something is
7 seriously going on here.

8 Q. All right. The Lane case was from
9 2009 to 2015, the same opinion 28, do you have any
10 changes in regard to this case of 2010 to 2016
11 time period?

12 A. No.

13 Q. Would you agree that all 29 opinions
14 are based upon your belief that an underlying
15 constitutional violation occurred here?

16 A. Well, that's the purpose of the
17 report that the Monell condition is a
18 constitutional violation. Yes.

19 Q. So you're saying that the underlying
20 constitutional violation of the shooting of Pierre
21 Lory is what this Monell is based on?

22 MR. ODIM: Objection. That
23 misstates his evidence.
24

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1 Chicago's investigative process in the
2 disciplinary -- discipline system. Those
3 officers, who like the defendants, chose to engage
4 in misconduct did so with the reasonable belief
5 that their actions would not subject them to any
6 thorough and meaningful investigation and would
7 not be subject to meaningful application of
8 discipline so that their bad behavior would
9 effectively go unpunished."

10 Is this a redundant opinion
11 basically of the prior three or four opinions
12 under code of silence?

13 A. Yes.

14 Q. And what is the basis in your
15 opinion for a systemic flaw regarding the code of
16 silence?

17 A. Okay. So systemic meaning pervasive
18 throughout the organization and without that you
19 don't have this condition of -- throughout the
20 agency officers operating with impunity and that's
21 what I see in this particular case.

22 Q. Is the City required to have a
23 perfect system in this regard?

24 A. No, it's not and that's not at all

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1 BY THE WITNESS:

2 A. No, that's not what I'm saying. I'm
3 saying that what I took your question is the
4 underlying Monell -- I think I might have to have
5 the question read to me.

6 The underlying existence of the
7 Monell is the -- the existence of the Monell is
8 the underlying violation of the Constitution.
9 That's what I'm saying.

10 BY MR. GREEN:

11 Q. So essentially the conduct --
12 perceived conduct of the City in and of itself
13 separate from what actually occurred that night
14 regarding Pierre Lory is the constitutional
15 violation that you're talking about?

16 MR. ODIM: Objection to form.
17 Misstates his evidence.

18 BY THE WITNESS:

19 A. I think I said it precisely,
20 correctly, what I was intending, that the
21 Monell -- the existing Monell as reflected in
22 my -- as I have documented in my report, stated in
23 my report, better said, stated in my report based
24 on the items that I listed and is -- and the

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<p style="text-align: right;">Page 217</p> <p>1 incident, the underlying incident which brings us 2 to that Monell commentary, is the -- let me back 3 up. 4 And the Monell is the 5 constitutional violation that I sought to address 6 and testify to here at this deposition, the 7 Monell. Of course, if the jury finds the facts of 8 the shooting are unconstitutional, that adds to 9 the opinion. 10 Q. But if they find it was 11 constitutional and this, in fact, was a justified 12 shooting, then your opinions on Monell are 13 irrelevant, correct? 14 MR. MOWATT: Objection. Objection. 15 Foundation. Objection. Improper hypothetical. 16 BY THE WITNESS: 17 A. So, thank you for that and the 18 answer is no. As I said previously for a number 19 of hours, regardless of how this shooting actually 20 did occur is not -- does not hinge on whether the 21 Monell exists or not. The Monell exists. 22 BY MR. GREEN: 23 Q. I'm saying the constitutional 24 violation that's being alleged under the Monell</p>	<p style="text-align: right;">Page 219</p> <p>1 THE VIDEOGRAPHER: We are back on 2 the video record at 4:22 p.m. This is the 3 beginning of video media five. Go ahead. 4 MR. GREEN: This is Jonathan Green. 5 I have no further questions. The attorney for the 6 individual defendants -- 7 CROSS EXAMINATION 8 BY MR. BARNETT 9 Q. Sir, this is -- my name is Shawn 10 Barnett and I represent Defendant Sean Hitz and 11 Jeffery Riordan in this case and I have just a 12 couple of questions. 13 Now, you are not offering any 14 opinions regarding whether or not the shooting 15 itself was justified or unjustified, correct? 16 A. Correct. 17 Q. And on the second or third paragraph 18 of your report, you wrote that you are not going 19 to opine on the credibility of the witnesses 20 involved in the shooting incident itself, correct? 21 A. Correct. 22 Q. But you do say that the opinions you 23 offer are premised on the truthfulness of the 24 plaintiff's allegations and why do you do that?</p>
<p style="text-align: right;">Page 218</p> <p>1 rubric. 2 A. Well, if you put it that way, the 3 shooting death of Lorry is a constitutional 4 violation, but I never considered my report as 5 hinging solely on Lorry's -- the circumstances of 6 how Lorry was shot to death. 7 Q. So it's more commentary on general 8 activities in Chicago? 9 MR. ODIM: Objection. Foundation. 10 That misstates his evidence. 11 BY THE WITNESS: 12 A. No, I hope in 29 separate attempts 13 for me to be precise in -- first, as I said the 14 ocean, which is the Chicago Police Department, and 15 the two officers that swim in that ocean, and what 16 they did because of that is the best way I can say 17 it. 18 MR. GREEN: Let's take a break. 19 THE VIDEOGRAPHER: We are going off 20 the video record at 4:12 p.m. and this is the end 21 of video media four. 22 (Whereupon, a break was taken 23 after which the following 24 proceedings were had.)</p>	<p style="text-align: right;">Page 220</p> <p>1 A. Because there has to be a starting 2 point and so I -- there are allegations in the 3 complaint offered and I considered those. That's 4 why I put that sentence in there. 5 Q. So your report is based on the 6 premise that the plaintiff's allegations are true? 7 A. Well, the plaintiff's allegations 8 regarding the Monell are true. I'm taking -- they 9 have alleged that. They -- they have alleged that 10 the shooting did not occur as proffered by the 11 defendant officers certainly. 12 Q. And you're taking that as true as 13 well? 14 A. No, I'm taking it in consideration 15 not as true -- it needs to be said this way. I'm 16 not taking it as completely true. I'm taking 17 it -- I'm accepting that -- I'm accepting it for 18 certain purposes as true and as supported by the 19 physical evidence. That's the best way to say it. 20 There is significant physical evidence in that 21 regard. 22 Q. And that was based on the report of 23 plaintiff's retained expert Ronald Scott? 24 A. Partly, and I listed his report, but</p>

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<p style="text-align: right;">Page 221</p> <p>1 I could see it for myself as well. He was far 2 more precise in his evaluation. 3 Q. Have you received any training in 4 crime scene reconstruction? 5 A. Oh, as a detective and detective 6 bureau commander, I did often. We sorted -- as a 7 generalist detective. That would be the best way 8 to say it. 9 Q. Did you receive any specialized 10 training in that? 11 A. Just the generalist detective 12 training. That's all I received. 13 Q. So no classes or college or like FBI 14 run or anything like that? 15 A. Correct. 16 Q. All right. And you've reviewed the 17 deposition of the plaintiff and the deposition of 18 Officer Hitz and then the IPRA statements of Hitz, 19 Riordan and then a bunch of individuals identified 20 as Rule 30(b)(6) witnesses, correct? 21 A. Correct. 22 Q. Did you review the deposition of any 23 of the independent witnesses? 24 A. Only the depositions as listed. No</p>	<p style="text-align: right;">Page 223</p> <p>1 Q. 3:00 p.m. And this shooting 2 occurred in April of 2016, correct? 3 A. Yes. 4 Q. You didn't go to the scene any other 5 time than the one you did yesterday? 6 A. That's correct. 7 Q. And yesterday was December 26th, 8 2017? 9 A. Correct. 10 Q. Now, I'm looking at your report and 11 you wrote that you accepted as true that the 12 bullet struck the window, the second bullet fired 13 by Officer Hitz struck the window, correct? 14 A. Yes. 15 Q. And that's based on Ronald Scott's 16 report? 17 A. Yes. 18 Q. And it's based solely on Ronald 19 Scott's report, right, you did no independent 20 investigation into whether or not that was 21 actually Officer Hitz's second bullet? 22 A. Only what was occurred during that 23 investigation and the photographs that were taken. 24 Other than that, nothing else other than Scott.</p>
<p style="text-align: right;">Page 222</p> <p>1 others. 2 Q. So no independent witnesses, medical 3 examiners or Illinois State Police forensic 4 personnel? 5 A. You are correct. 6 Q. Did you review the deposition of 7 Ronald Scott? 8 A. No, I understand he was deposed, but 9 I have not seen it. 10 Q. Did you review the report of the 11 other expert witness in this case, Lucien Hague? 12 A. Yes, I've seen it. 13 Q. That's not listed on your documents 14 that you reviewed, right? 15 A. You know, you're correct. It just 16 recently was shown to me and I should have 17 indicated that I've seen it. 18 Q. Okay. And I understand that you 19 recently went to visit the site of the shooting 20 incident? 21 A. Yes. 22 Q. When did you go do that? 23 A. Right around 3:00 yesterday. 3:00 24 p.m.</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. And you wrote that -- you comment in 2 your report that it was problematic that you -- 3 that Officer Hitz said that Pierre Loury was 4 quickly able to climb over the fence because you 5 reference Officer Riordan's statement that he 6 needed assistance to get over the fence, correct? 7 A. Correct. 8 Q. And you said that the fence was six 9 foot high? 10 A. You know, it's not six feet high. 11 It's substantially lower than that. I took -- 12 when I wrote this report, I accepted the 13 statements in the investigative file as six feet 14 and it's not and Riordan as you know says he 15 thought it was six feet. 16 Q. Does the fact that it was 17 considerably lower than six foot affect your 18 opinion that it may have taken Loury additional 19 time to climb over the fence? 20 A. Not in particular. 21 Q. Okay. So, Loury -- did you review 22 the medical examiner's file? 23 A. The autopsy and the photos, yes. 24 Q. You were able to see that Mr. Loury</p>

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<p style="text-align: right;">Page 225</p> <p>1 was a slight individual with a trim or athletic 2 build? 3 A. Yes. 4 Q. You know that Officer Riordan was 5 6'5" and I believe he gave a description that he 6 was significantly larger, more heavysset? 7 A. Yes. 8 Q. Does the fact that he is more 9 heavysset than Mr. Louri, does that affect your -- 10 did you take that -- the body type of the two 11 individuals into consideration when you were 12 stating that it was improbable that Louri was able 13 to climb the fence without assistance in such a 14 quick time? 15 A. I don't think I said it was 16 improbable he could climb the fence. The quick 17 time -- I accepted Scott's timing. He says the 18 whole thing start to finish was 17 seconds. I 19 think that's physically accurate and I noted that 20 Riordan had to be helped, I'll use that term, to 21 go over the fence and he was the first one over 22 the fence after Louri. 23 Q. So -- so the time you just accepted 24 Mr. Scott's analysis on that point?</p>	<p style="text-align: right;">Page 227</p> <p>1 BY THE WITNESS: 2 A. In that regard, it does certainly. 3 And I explained the importance of physical 4 evidence. 5 BY MR. BARNETT: 6 Q. So, in a way, you are commenting in 7 that you believe the officer's testimony is not 8 credible? 9 MR. ODIM: Object. Misstates his 10 evidence and form. 11 BY THE WITNESS: 12 A. Well, to that extent, I am in that 13 what the officer -- what the two officers said 14 occurred in terms of their account as they gave it 15 and what the physical evidence indicates there is 16 a clear discrepancy and so that is, I guess, in 17 that regard, a credibility issue and I do comment 18 in favor of the physical evidence. 19 BY MR. BARNETT: 20 Q. And what exact physical evidence are 21 you referring to in that -- what specific physical 22 evidence do you -- are you relying upon to opine 23 that you do not find the officers trustworthy? 24 MR. ODIM: Objection. Misstates his</p>
<p style="text-align: right;">Page 226</p> <p>1 A. Oh, no. There is -- there is a 2 clock. There is a recording. It's 17 seconds. 3 Q. But the timing that -- Mr. Scott's 4 analysis of how quickly it took Mr. Louri to run 5 you accepted Mr. Scott's analysis on that point? 6 A. Only -- only generally. You know, 7 Scott talks about how fast he could run and how 8 much time there was. Clearly this occurs very, 9 very quickly and the confrontation time I noted 10 that Scott puts it at I forget -- within seconds, 11 like less than three seconds. I have it in the 12 record. I think I might have it written down 13 here. I don't. But that was enough for me to 14 know that it happened very, very quickly and at 15 close range. That was sufficient for my 16 evaluation. 17 Q. All right. Now, you started out 18 with the premise that you weren't making any 19 credibility assessments, but isn't it true that 20 numerous times throughout your deposition today 21 you have made the comment that the physical 22 evidence belies the officer's testimony, isn't 23 that opining on the credibility of officers? 24 MR. ODIM: Objection. Form.</p>	<p style="text-align: right;">Page 228</p> <p>1 evidence and form. 2 BY THE WITNESS: 3 A. I comment in my report, but I'll 4 give you one example I think is a key example. 5 Hitz says that he shot Louri while he was down and 6 only then. Two shots, quick succession, we have 7 them recorded and that would not line up with the 8 shot in the window. That was obvious -- would be 9 obvious to any detective at the scene, any 10 investigator at the scene and would require a 11 workup on that issue, which didn't occur and 12 speaks, I think, volumes. 13 So knowing that one of the shots 14 did not go into Louri and we have Louri's body in 15 position we know and the allegation or the 16 statement "I shot both while he was down," then 17 somewhere in that general range is going to be the 18 slug from -- from Hitz's gun and there was no 19 effort to locate it or document it. 20 BY MR. BARNETT: 21 Q. And so it is only Mr. Scott who 22 opined that Officer Hitz's second shot went into 23 the window? 24 A. You know, you put your finger on it.</p>

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1 You're right. It took Scott to document that and
 2 to put it in good context. I saw it obviously and
 3 I saw it as a gross deficiency and deliberate. I
 4 took it as deliberate. I don't know how it could
 5 be seen any other way, looking the other way that
 6 they ignored it deliberately because there is
 7 commentary that in the IPRA statement that the
 8 investigator officer at the scene simply took
 9 Hitz's statement knowing that that would not line
 10 up with the shot through the window, that would
 11 not explain how that shot -- if the shot was from
 12 Hitz's gun, that that was clearly belied Hitz
 13 statement on how the shooting occurred and,
 14 therefore, concluded on that basis it must be from
 15 another gunshot from some other time.

16 Q. So you have the shot in the window,
 17 is there any other physical evidence that you
 18 relied upon in your opinion that the officer's
 19 testimony was untruthful?

20 A. Yes, there is the time that Hitz and
 21 Riordan say the sequence of what occurred
 22 physically, how things could be done in the 16 or
 23 17 seconds doesn't appear in my opinion to line up
 24 and then it falls into the category of what is not

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1 because we have two points, we have the blind and
 2 we have the window itself and along that line is
 3 going to be the muzzle of the gun that fired that
 4 slug, the failure to workup the forensics on the
 5 gun itself as I've discussed. Those issues come
 6 to mind.

7 Q. What do you mean by the forensics of
 8 the gun?

9 MR. ODIM: Objection. Asked and
 10 answered.

11 BY THE WITNESS:

12 A. There is three DNA profiles and
 13 they're different races. Now, isn't it a simple
 14 thing of "Hey, Hitz, hey Riordan, let's have your
 15 DNA. Let's take a look."

16 BY MR. BARNETT:

17 Q. Have you reviewed any of the actual
 18 DNA testing that was conducted on the firearm?

19 A. Only what is in the reports done by
 20 Illinois's crime lab. They did a profile.
 21 They're three specific contributors, none of which
 22 matched Louri precisely except for race.

23 Q. You didn't see the most recent DNA
 24 report that was released within the past several

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1 documented. As I said before, it appears
 2 deliberate. There are a number of those -- a
 3 number of facts that fall into that category.

4 Q. So the shot in the window, the
 5 timing of everything that happened, any other
 6 physical evidence?

7 A. Well, it's the absence -- I said the
 8 absence of things such as locating if there were
 9 two shots fired and it's uncontested there were.
 10 There are two shell casings. There are two
 11 recorded gunshots. The timing of those two
 12 gunshots is uncontested. We have a bullet in
 13 Louri, it's not through and through and we have a
 14 missing slug. The answer to that tune is bring
 15 out the tent, bring out the trailer and we're not
 16 leaving until we find that slug or account for it.

17 Q. All right. So the shot in the
 18 window, the timing and the absence of continued
 19 searching for that second shell?

20 A. Well, and there is more. There is
 21 the failure to walk through it, the failure to --
 22 even accepting Hitz's statement about that cannot
 23 be one of my shots, failure to recover where that
 24 slug went, to run the trajectory through --

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1 months?

2 A. I don't know what you're talking
 3 about.

4 Q. Okay. I'll take that as a no.

5 MR. ODIM: Misstates his evidence.

6 BY MR. BARNETT:

7 Q. You never -- you didn't do any
 8 analysis into the trajectory of the bullet that
 9 went through the window itself, correct?

10 A. I did not.

11 Q. You relied on Mr. Scott's analysis
 12 of that?

13 A. Correct.

14 Q. And there was snow on the ground
 15 when you went out there yesterday?

16 A. There was. About two inches.

17 Q. A lot different than California,
 18 right?

19 A. Yeah, barely. I left 80 degrees.

20 MR. BARNETT: All right. I have no
 21 further questions on behalf of the individual
 22 defendants. I'll give it back --

23 MR. ODIM: Plaintiff has no
 24 questions.

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1 REDIRECT EXAMINATION
2 BY MR. GREEN

3 Q. I would just like to mention when
4 you first came in I asked if you brought anything
5 with you and in reference to the questions to
6 individual defendant attorney I see you're making
7 reference to notes, do you have notes on this case
8 that you brought with you?

9 A. These are little prompts for -- to
10 anticipate questions for the depo to make it run
11 smoothly.

12 Q. Let me just have a copy of that for
13 the record.

14 A. You can have it.

15 MR. GREEN: I'll be right -- we'll
16 just take a quick break.

17 THE VIDEOGRAPHER: Okay. We are
18 going off the video record at 4:40 p.m.

19 (Whereupon, a break was taken
20 after which the following
21 proceedings were had.)

22 THE VIDEOGRAPHER: We are back on
23 video record at 4:43 p.m.

24 MR. GREEN: All right. Thank you.

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1 BY MR. GREEN:

2 Q. Mr. Clark, you handed me your notes.
3 We made copies for everyone. I marked it as
4 Exhibit 5.

5 Would you take a quick look at
6 Exhibit 5 if you have your notes in front of you,
7 the original.

8 (Document marked as Clark
9 Exhibit No. 5 for
10 identification.)

11 BY THE WITNESS:

12 A. I have it.

13 BY MR. GREEN:

14 Q. At the top, you have September 2017
15 you have site visit, is that 3 -- is that 3:30
16 p.m. or 3:00?

17 A. I think it's -- it is 3:30, right?

18 Q. And these were notes from your visit
19 yesterday?

20 A. No, just this morning when I wrote
21 out these limit prompts. That's -- it is 3:30
22 because my plane landed at 4:30 and -- I mean,
23 2:30. So, right.

24 Q. And the second page you have a

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1 diagram, is that diagram from when you visited
2 there?

3 A. I wrote it out this morning so I
4 know where north was and orient myself.

5 Q. Okay. And you have a note there
6 about the McIntosh case and when that occurred?

7 A. Correct.

8 Q. August 24th, 2014. And just on the
9 front, you also have your opinions one through
10 five.

11 Are those the five general
12 opinions that we discussed earlier?

13 A. Yes.

14 Q. And that's how you would group them
15 yourself?

16 A. Yes.

17 Q. And then you have to the right DOJ,
18 is that -- that you base those upon the DOJ
19 report?

20 A. Right, they're all taken out -- as
21 you know, DOJ lists seven. These are five out of
22 those seven.

23 Q. And that's one would be six, two
24 would be five, three would be eight, four would be

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1 four and five would be six --

2 A. Correct.

3 Q. -- is that correct? And just up on
4 the left-hand top corner, what is that?

5 A. Oh, that's my career. I just wanted
6 to -- in terms of years starting out with Central
7 Jail, patrol, detective bureau, communications --
8 then I became a sergeant, communications, patrol,
9 EOB, became a lieutenant, CJ, Central Jail, CVS,
10 Crescenta Valley Station, RFB, Reserve Forces
11 Bureau and the last NORSAT. Those are the basic
12 time periods in my career.

13 Q. Okay. And the 7:40 p.m. up here is
14 it relates to when the shooting occurred --

15 A. Correct.

16 Q. -- in this underlying case?

17 MR. GREEN: Okay. No further
18 questions. Thank you.

19 MR. ODIM: Again, no further
20 questions for the plaintiff and we'll reserve
21 signature.

22 MR. GREEN: I was just going to ask
23 you. Thank you.

24 THE VIDEOGRAPHER: All right. Thank


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<p style="text-align: right;">Page 237</p> <p>1 you. This concludes today's deposition. The time</p> <p>2 is now 4:46 p.m. and we are going off the video</p> <p>3 record at the end of media unit five.</p> <p>4 AND FURTHER DEPONENT SAITH NAUGHT...</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 239</p> <p style="text-align: center;">WITNESS ERRATA SHEET</p> <p>1</p> <p>2 I wish to make the following changes for the</p> <p>3 following reasons:</p> <p>4 Page Line</p> <p>5 _____ Change: _____</p> <p>6 _____ Reason: _____</p> <p>7 _____ Change: _____</p> <p>8 _____ Reason: _____</p> <p>9 _____ Change: _____</p> <p>10 _____ Reason: _____</p> <p>11 _____ Change: _____</p> <p>12 _____ Reason: _____</p> <p>13 _____ Change: _____</p> <p>14 _____ Reason: _____</p> <p>15 _____ Change: _____</p> <p>16 _____ Reason: _____</p> <p>17 _____ Change: _____</p> <p>18 _____ Reason: _____</p> <p>19 _____ Change: _____</p> <p>20 _____ Reason: _____</p> <p>21 _____ Change: _____</p> <p>22 _____ Reason: _____</p> <p>23 _____ Change: _____</p> <p>24 _____ Reason: _____</p> <p>(Signed) _____</p>
<p style="text-align: right;">Page 238</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 ESTATE OF PIERRE LOURY,)</p> <p>5 Deceased, by Tambrasha)</p> <p>6 Hudson, Administrator,)</p> <p>7)</p> <p>8 Plaintiff,) No. 16 C 04452</p> <p>9)</p> <p>10 vs)</p> <p>11)</p> <p>12 CITY OF CHICAGO, Chicago)</p> <p>13 Police Officers SEAN HITZ)</p> <p>14 (Star No. 6272) and JEFF J.)</p> <p>15 RIORDAN (Star No. 7716),)</p> <p>16)</p> <p>17 Defendants.)</p> <p>18 I hereby certify that I have read</p> <p>19 the foregoing transcript of my deposition given on</p> <p>20 December 27, 2017, at the time and place</p> <p>21 aforesaid, consisting of Pages 1 through 237,</p> <p>22 inclusive, and I do again subscribe and make an</p> <p>23 oath that the same is a true, correct and complete</p> <p>24 transcript of my deposition so given as aforesaid.</p> <p>please check one:</p> <p>_____ I have submitted errata sheet(s)</p> <p>_____ No corrections were noted</p> <p>_____ ROGER CLARK</p> <p>SUBSCRIBED AND SWORN TO</p> <p>before me this _____ day</p> <p>of _____, A.D., 2018.</p> <p>Notary Public</p>	<p style="text-align: right;">Page 240</p> <p style="text-align: center;">WITNESS ERRATA SHEET</p> <p>1</p> <p>2 I wish to make the following changes for the</p> <p>3 following reasons:</p> <p>4 Page Line</p> <p>5 _____ Change: _____</p> <p>6 _____ Reason: _____</p> <p>7 _____ Change: _____</p> <p>8 _____ Reason: _____</p> <p>9 _____ Change: _____</p> <p>10 _____ Reason: _____</p> <p>11 _____ Change: _____</p> <p>12 _____ Reason: _____</p> <p>13 _____ Change: _____</p> <p>14 _____ Reason: _____</p> <p>15 _____ Change: _____</p> <p>16 _____ Reason: _____</p> <p>17 _____ Change: _____</p> <p>18 _____ Reason: _____</p> <p>19 _____ Change: _____</p> <p>20 _____ Reason: _____</p> <p>21 _____ Change: _____</p> <p>22 _____ Reason: _____</p> <p>23 _____ Change: _____</p> <p>24 _____ Reason: _____</p> <p>(Signed) _____</p>

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<p style="text-align: right;">Page 241</p> <p>1 WITNESS ERRATA SHEET</p> <p>2</p> <p>3 I wish to make the following changes for the</p> <p>4 following reasons:</p> <p>5 Page Line</p> <p>6 Change: _____</p> <p>7 Reason: _____</p> <p>8 Change: _____</p> <p>9 Reason: _____</p> <p>10 Change: _____</p> <p>11 Reason: _____</p> <p>12 Change: _____</p> <p>13 Reason: _____</p> <p>14 Change: _____</p> <p>15 Reason: _____</p> <p>16 Change: _____</p> <p>17 Reason: _____</p> <p>18 Change: _____</p> <p>19 Reason: _____</p> <p>20 Change: _____</p> <p>21 Reason: _____</p> <p>22 Change: _____</p> <p>23 Reason: _____</p> <p>24 (Signed) _____</p>	<p style="text-align: right;">Page 243</p> <p>1 The undersigned is not interested in the</p> <p>2 within case, nor of kin or counsel to any of the</p> <p>3 parties.</p> <p>4 Witness my official signature in and for</p> <p>5 Cook County, Illinois, on this _____ day of</p> <p>6 _____, A.D., 2018.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <div style="text-align: right;">  <p><i>Steven Brickey</i></p> <p>STEVEN BRICKEY, CSR</p> <p>8 West Monroe Street</p> <p>Suite 2007</p> <p>Chicago, Illinois 60603</p> <p>Phone: (312) 419-9292</p> <p>CSR No. 084-004675</p> </div>
<p style="text-align: right;">Page 242</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 I, Steven Brickey, Certified Shorthand</p> <p>5 Reporter, do hereby certify that on the 27th day</p> <p>6 of December, A.D., 2018, the deposition of the</p> <p>7 witness, ROGER CLARK, called by the Defendants,</p> <p>8 was taken before me, reported stenographically,</p> <p>9 and was thereafter reduced to typewriting under my</p> <p>10 direction.</p> <p>11 The said deposition was taken at 30 North</p> <p>12 LaSalle Street, Chicago, Illinois, and there were</p> <p>13 present counsel as previously set forth.</p> <p>14 The said witness, ROGER CLARK, was first</p> <p>15 duly sworn to tell the truth, the whole truth, and</p> <p>16 nothing but the truth, and was then examined upon</p> <p>17 oral interrogatories.</p> <p>18 I further certify that the foregoing is a</p> <p>19 true, accurate, and complete record of the</p> <p>20 questions asked of and answers made by the said</p> <p>21 witness, ROGER CLARK, at the time and place</p> <p>22 hereinabove referred to.</p> <p>23 The signature of the witness, ROGER CLARK,</p> <p>24 was reserved by agreement.</p>	

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